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No. OFFICE OF THE CLERK

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In The

# Supreme Court of the United States

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LARRY DUNN, TOM DUCKWORTH, et al.,

*Petitioners,*

vs.

AIR LINE PILOTS ASSOCIATION,
HARRY DUFFY, et al.,

*Respondents.*

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**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit**

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## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Does federal labor law, under the doctrine of preemption, entitle a labor union and its leaders to a summary judgment in a state libel action brought against them for printing and distributing blacklists to potential employers on a world-wide basis accusing its union members and others of being trade union "scabs" – solely because these workers refused to honor an illegal strike unilaterally called by union leaders without taking a union membership vote as expressly required by the union constitution?

2. Does federal labor law, under the doctrine of preemption, entitle a labor union and its leaders to a summary judgment in a state libel action brought against them for printing and distributing blacklists to potential employers on a world-wide basis accusing its union members of being trade union "scabs" – solely because these workers ended a strike, which they had previously honored, and returned to work only after their local union president directed them to do so?

## LIST OF PARTIES

There are a large number of parties to this action. Due to space limitations, their names do not appear in the caption of the case appearing on the preceding cover page. Accordingly, a list of all such parties to the proceeding in the court below [the Eleventh Circuit Court of Appeals] whose judgment is the subject of this petition is contained in Appendix D.

# TABLE OF CONTENTS

Page

QUESTIONS PRESENTED .......................... i

LIST OF PARTIES .............................. ii

TABLE OF CONTENTS ............................ iii

INDEX TO APPENDICES .......................... v

TABLE OF AUTHORITIES ......................... vi

OPINIONS BELOW ............................... 1

JURISDICTION ................................. 1

STATUTORY PROVISIONS INVOLVED ................ 2

STATEMENT OF THE CASE ........................ 2

A. Proceedings in District Court and Eleventh Circuit Court of Appeals ........................ 2

   1. Basis for Federal Jurisdiction .............. 2

   2. The nature of the action .................. 2

   3. Disposition of libel claim ................. 4

B. Statement of the Evidence in the Record ....... 5

   1. IAM sympathy strike and its immediate aftermath ................................. 6

   2. Eastern ALPA union meeting and immediate aftermath ................................. 7

   3. World-wide publication of "scab" blacklist .. 9

   4. Division of Eastern ALPA union membership over IAM sympathy strike ................. 10

TABLE OF CONTENTS – Continued

Page

REASONS FOR GRANTING THE PETITION ....... 11

A. FEDERAL LABOR LAW DOES NOT ENTITLE A LABOR UNION AND ITS LEADERS TO A SUMMARY JUDGMENT IN A STATE LIBEL ACTION BROUGHT AGAINST THEM FOR PUBLISHING 50,000 BLACKLISTS TO POTENTIAL EMPLOYERS ON A WORLD-WIDE BASIS ACCUSING ITS UNION MEMBERS AND OTHERS OF BEING TRADE UNION "SCABS" – WHERE, AS HERE, THESE WORKERS REFUSED TO HONOR AN ILLEGAL STRIKE UNILATERALLY CALLED BY UNION LEADERS WITHOUT TAKING A UNION MEMBERSHIP VOTE AS EXPRESSLY REQUIRED BY THE UNION CONSTITUTION ................ 11

1. Importance of the issue decided ........... 11
2. Prior Supreme Court precedent ............ 17
3. ALPA's IAM Sympathy Strike was illegal .. 21
4. "Actual Malice" standard satisfied ......... 24

B. FEDERAL LABOR LAW DOES NOT ENTITLE A LABOR UNION AND ITS LEADERS TO A SUMMARY JUDGMENT IN A STATE LIBEL ACTION BROUGHT AGAINST THEM FOR PUBLISHING 50,000 BLACKLISTS TO POTENTIAL EMPLOYERS ON A WORLD-WIDE BASIS ACCUSING ITS UNION MEMBERS OF BEING TRADE UNION "SCABS" – WHERE, AS HERE, THESE UNION MEMBERS HONORED A PREVIOUSLY-CALLED ILLEGAL UNION STRIKE, AND LATER RETURNED TO WORK ONLY WHEN THEIR LOCAL UNION PRESIDENT DIRECTED THEM TO DO SO ................ 28

CONCLUSION ................................ 30

TABLE OF CONTENTS – Continued

INDEX TO APPENDICES

Page

APPENDIX A 11th Circuit opinion..........App. 1

APPENDIX B USDC Order Granting Summary Judgment..................App. 61

APPENDIX C Denial of Rehearing – 11th Cir.........................App. 92

APPENDIX D List of all parties ............App. 94

APPENDIX E ALPA Union Charges against Jack Bavis .................App. 101

APPENDIX F ALPA's Point-to-Point publication.........................App. 105

APPENDIX G ALPA's Blacklist ............App. 107

APPENDIX H Excerpts from ALPA's 11th Cir. Brief........................App. 169

APPENDIX I ALPA's "Black Sunday" letter..App. 174

APPENDIX J Petitioners' Third Amended Complaint .................App. 180

APPENDIX K Excerpts from Petitioners' 11th Cir. Reply Brief .............App. 222

## TABLE OF AUTHORITIES

Page

CASES

Dow v. United Brotherhood of Carpenters and Joiners of America, 1 F.3d 56, 58 (1st Cir. 1993) .... 23

Eastman Kodak Co. v. Image Tech. Serv., Inc., 504 U.S. 451, 465 n. 10 (1992) .... 5

Harte-Hanks Communications, Inc. v. Connaughton, 491 U.S. 657 (1989) .... 27

Linn v. United Plant Guard Workers of America, Local 114, 383 U.S. 53 (1966) .... 18, 20

New York Times Co. v. Sullivan, 376 U.S. 254 (1964) .... 18

Old Dominion Branch No. 496, Nat'l Ass'n of Letter Carriers v. Austin, 418 U.S. 264 (1974) .... 19, 20

St. Amant v. Thompson, 390 U.S. 727 (1968) .... 25

Vandenburg v. Newsweek, Inc., 441 F.2d 378 (5th Cir. 1975) .... 27

STATUTE AND RULES

The Railway Labor Act, 45 U.S.C. §§ 151 *et seq.* .... 2

28 U.S.C. § 1254 (1) .... 1

28 U.S.C. § 1331 .... 2

28 U.S.C. § 1441(a) .... 2

Rule 10(c), U.S. Sup.Ct. Rules .... 12

Rule 13.1, 13.3, U.S. Sup.Ct. Rules .... 1

11th Cir.R. 35-2 .... 1

TABLE OF AUTHORITIES – Continued

Page

11th Cir.R. 35-6 . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 1

Federal Rules of Civil Procedure, Rule 54(b) . . . . . . . . . 5

OTHERS

ALPA Administrative Manual, Part 4, Section D . . . . . 23

Art. I, Sec. 25, ALPA Constitution . . . . . . . . . . . . . . . . . . 21

Art. IV, Sec. 2B, ALPA Constitution . . . . . . . . . . . . . . . . . 21

Webster's Third International Dictionary 2022 (1986) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 15

## OPINIONS BELOW

The 2-1 majority opinion of the Eleventh Circuit Court of Appeals (Tjoflat, J. dissenting) [App. A, 1-59.][1] is reported at 193 F.3d 1185 (11th Cir. 1999). The opinion of the United States District Court for the Southern District of Florida [App. B, 62-91] is unreported.

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## JURISDICTION

On October 25, 1999, the Eleventh Circuit Court of Appeals entered its judgment in this case. [App. A, 60]. On November 12, 1999, within 21 days after the entry of this judgment, the petitioners filed a timely motion for rehearing en banc [see 11th Cir.R. 35-2] – which under 11th Cir.R. 35-6 is also "treated as a petition for rehearing before the original panel." On December 17, 1999, the Eleventh Circuit Court of Appeals denied this motion both as a motion for rehearing and as a motion for rehearing en banc. [App. C, 92-93]. Within 90 days thereafter, this timely petition for a writ of certiorari was filed in this Court [Rule 13.1, 13.3, U.S. Sup.Ct. Rules], seeking review of the Eleventh Circuit Court of Appeals' judgment pursuant to 28 U.S.C. § 1254(1).

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[1] The symbol "App." refers to the appendix in this cause.

## STATUTORY PROVISIONS INVOLVED

The Railway Labor Act, 45 U.S.C. §§ 151 et seq. is generally involved in this case.

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## STATEMENT OF THE CASE

### A. Proceedings in District Court and Eleventh Circuit Court of Appeals

### 1. Basis for federal jurisdiction

This state libel action, arising out of a labor dispute, was originally brought by the petitioners in the Circuit Court for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. The respondents Airline Pilots Association [ALPA] and their leaders thereafter removed this cause to the United States District Court for the Southern District of Florida pursuant to 28 U.S.C. § 1441(a), and then successfully resisted petitioners' motion to remand the action back to state court. The asserted basis for federal jurisdiction is that this is an action "arising under the . . . laws . . . of the United States" – thereby giving the District Court original jurisdiction in the case under 28 U.S.C. § 1331 – because the action may be preempted under the Railway Labor Act.

### 2. The nature of the action

This state libel action arises out of the ill-fated International Association of Machinists [IAM] strike (1989-91) at Eastern Airlines that eventually drove Eastern out of business in January 1991. From March 1, 1989 to November 22, 1989, the respondent ALPA's local union leadership at Eastern ordered its members to go out on strike without taking a union membership vote – we say illegally – in sympathy with the IAM strike. Many of the petitioners defied this strike from the outset or shortly thereafter. About five months into the strike, on August 6, 1989, the respondents held a local union meeting of all the Eastern pilots – at which time the local ALPA union president at Eastern ordered the striking pilots to return to work, and over 250 of the petitioners complied.

The gravamen of the libel action is that after Eastern ceased operations, the respondents ALPA and its leaders, with *New York Times* "actual malice," printed and distributed 50,000 copies of a blacklist to all major commercial airlines on a world-wide basis *falsely* accusing 2,242 Eastern pilots [over 40% of the Eastern ALPA union membership and all the petitioners] of being trade union "scabs" in the IAM sympathy strike. The petitioners contend that this libelous, world-wide blacklist destroyed their careers as commercial airline pilots.

The petitioners are a group of 413 airline pilots who formerly worked for Eastern and were represented by ALPA. They filed a complaint, later amended, for libel[2] under Florida law against the respondents ALPA and its union leaders.[3] [3d Amended Compl] [App. K]. In their complaint, the petitioners divided themselves into three groups depending on when they crossed the IAM/ALPA picket lines during this labor dispute. The Group I petitioners crossed the subject picket lines after August 6, 1989, when they were told to do so by their local union president at Eastern, Jack Bavis.[4] The Group II petitioners crossed the subject picket lines at various times between March 4, 1989 and August 6, 1989, while the Group III petitioners never honored the subject picket lines.

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[2] Claims were also filed for intentional interference with business relationships, and breach of the duty of fair representation. These claims, however, were either dismissed or resulted in the entry of an adverse summary judgment and form no part of the instant petition for a writ of certiorari.

### 3. Disposition of libel claim

Upon proper motion, the United States District Court for the Southern District of Florida (Judge Edward Davis) entered a summary judgment for the respondents on the libel claim – on the ground that the claim was preempted by the Railway Labor Act. In particular, the District Court concluded that as a matter of law (1) the "scab" accusation was true, and (2) even if false, it was not uttered with "actual malice." [Sum.Judg. Order]. [App. B, 80-87]. The petitioners filed a timely appeal to the United States Court of Appeals for the Eleventh Circuit from a subsequently-entered certified final judgment under Rule 54(b) of the Federal Rules of Civil Procedure. The Eleventh Circuit Court of Appeals affirmed based on the same grounds relied on by the District Court. [Maj.Op.][5] [App. A, 9-30]. This petition for a writ of certiorari follows.

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[3] These leaders were: Henry Duffy, the president of ALPA from January 1, 1983 to December 31, 1990; Randolph Babbit, Executive Administrator of ALPA during Duffy's term and president of ALPA since January 1, 1991; C.H. Copeland, Chairman of the Eastern MEC of ALPA from September 1989 to December 31, 1994; and J. Breen, Lewis Baldwin and Gregg Petachenko, members of the Eastern MEC's Strike Committee. [Sum.Judg. Order] [App. B, 64].

[4] For simplicity sake, Jack Bavis is referred to throughout this petition as the "local union president." By this, we mean that Bavis was the Chairman of the Master Executive Council of ALPA at Eastern Airlines, and was the highest ALPA official at Eastern Airlines, save for the national ALPA president. Stated differently, he was, in effect, in charge of all ALPA pilots who flew for Eastern.

## B. Statement of the Evidence in the Record

Both the majority and dissenting opinions in the Eleventh Circuit's decision below [together with the record before the Eleventh Circuit] reveal the following record evidence viewed in a light most favorable to the petitioners – the appellate standard for reviewing a summary judgment.[6]

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[5] The symbol "Maj.Op." refers to the majority opinion of the Eleventh Circuit Court of Appeals in this cause.

[6] The Eleventh Circuit below correctly states that the standard of review for a summary judgment, as here, is de novo in which the appellate court reviews "all [record] evidence and all factual inferences therefrom in the light most favorable to the non-moving party" – the petitioners herein. [Maj.Op.] [App. A, 7]; see e.g. *Eastman Kodak Co. v. Image Tech. Serv., Inc.*, 504 U.S. 451, 465 n. 10 (1992).

### 1. IAM sympathy strike and its immediate aftermath

On March 1, 1989, the Eastern Master Executive Council [MEC] – the local union leadership of ALPA at Eastern Airlines – ordered the 3400 ALPA membership at Eastern Airlines to go out on strike in sympathy with a simultaneous strike called by the IAM that eventually drove Eastern out of business. [Maj.Op.] [App. A, 2-3]. The strike was called without taking a union membership vote [Maj.Op.] [A, 15]; [Dissent][7] [App. A, 42] – despite union constitutional provisions expressly requiring a union membership vote by secret ballot as a precondition to calling a strike.[8]

The Group II and Group III petitioners in this action – Eastern ALPA members and new-hires – did not honor this strike and went to work at Eastern. [Maj.Op.] [App. A, 26 n. 18]. Eastern MEC officials placed these pilots [among others] on a "scab" blacklist – as they did anyone who returned to work at Eastern prior to November 22, 1989. [Maj.Op.] [App. A, 3-4, 5].

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[7] The symbol "Dissent" refers to Judge Tjoflat's dissenting opinion to the Eleventh Judicial Circuit's decision in this cause.

[8] *"When a suspension or withdrawal of service [i.e. a strike] is called for in compliance with the requirements of the Constitution and By-Laws or the Policy Manual, the members will be balloted before such action may be taken. Association general balloting procedures will be used." Art. I, Sec. 25, ALPA Constitution.* (emphasis and brackets added). "The approval by a majority vote of the Master Executive Council with the advice of the President [of ALPA]on an airline is mandatory before a strike vote of the members of an airline may be taken. *This membership strike vote shall be by secret ballot. . . . A simple majority of valid ballots returned shall govern."* Art. IV, Sec. 2B, ALPA Constitution. (emphasis and brackets added). [Maj.Op.] [App. A, 18 n. 12].

The strike provoked a great deal of internal union membership disagreement about whether the strike should continue. [Maj.Op. 4] [App. A, 4]. Consequently, the Eastern MEC called a union meeting to discuss the matter. [Maj.Op.] [App. A, 4].

### 2. Eastern ALPA union meeting and immediate aftermath

On August 6, 1989 this meeting was conducted. [Maj.Op.] [App. A, 4]. At the meeting, the Chairman of the Eastern MEC Jack Bavis – the equivalent of the local union president at Eastern – officially instructed the striking Eastern pilots to go back to work. [Maj.Op.] [App. A, 28].[9] Under the Eastern Airlines Pilots Manual issued to every Eastern pilot, a strike action could be terminated *only* at the direction of the MEC chairman.[10] Moreover, at this same meeting "ALPA National officials [also] advised the Eastern pilots to go back to work." [Def. Randolph Babbit article in Dec. 1992 ALPA official newsletter] [App. F, 105] [Dissent] [App. A, 54]. The individual respondents in this action were all present at this meeting. [Dissent] [App. A, 55, 56].

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[9] The Eleventh Circuit correctly concludes there is a jury issue as to whether this event happened because 17 of the petitioners filed affidavits opposing summary judgment in the District Court stating that Bavis instructed them to return to work at the August 6, 1989 meeting. [Maj.Op.] [App. A, 28]. In addition, on November 22, 1989, the Eastern MEC of ALPA later brought union charges against Bavis for officially advising the striking Eastern pilots, at this union meeting, to return to work to save their jobs – a damning piece of evidence to say the least. [Dissent] [App. A, 54]. These charges are outlined in a January 3, 1990 letter sent by the respondent Charles Copeland to the Chairman of the ALPA Hearing Board. [App. E, 101-04].

Distressingly, the Eleventh Circuit in its opinion distorts the contents of what it claims to be a single unofficial audiotape taken by one of the pilots at the meeting. [Maj.Op.] [App. A, 27]. Actually, the quotes appearing in the opinion come from *five* –

With the express knowledge of the individual respondents, on August 7, 1989 and the days that immediately followed, over 450 striking Eastern pilots returned to work at Eastern – including all the Group I petitioners [Sum.Judg.Order] [App. B, 70] [App. I, 175, 178] – we say in obvious compliance with Jack Bavis' directive. Eastern MEC officials placed these pilots on their "scab" blacklist

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not one – incomplete, partially-garbled, unofficial audiotapes taken by various pilots that the Court has strung together as if they came from one continuous transcript – none of which was remotely a "preface" to Bavis' statements at the meeting. It is unnecessary, however, at this point to correct the many errors that appear in the Circuit Court's recitation of these garbled, fragmented transcripts – in view of the Court's conclusion that there is some evidence that Bavis told the union members to go back to work at the August 6, 1989 union meeting. Nonetheless, suffice it to say that all these unfortunate errors were discussed at length in the petitioners' reply brief [App. K, 223-225] in the Eleventh Circuit as an answer to the respondents' inaccurate record representations to the contrary – representations that the Circuit Court regrettably adopted.

[10] *"PLEASE KEEP IN MIND: A STRIKE ACTION WILL NOT BE CALLED OFF OR TERMINATED EXCEPT BY DIRECTION OF THE MEC CHAIRMAN."* (capitals and underscoring in original) [Dissent] [App. A, 53].

– as they did anyone who returned to work at Eastern prior to November 22, 1989. [Maj.Op.] [App. A, 3-4, 5].

On August 12, 1989, the Eastern MEC announced to the union membership that the strike was still on [Maj.Op.] [App. A, 28-29] – after the Group I petitioners had already returned to work. The strike then continued for over three more months until November 22, 1989, when the respondents finally gave up and announced to the union membership that the strike was over. [Maj.Op.] [App. A, 5].

### 3. World-wide publication of "scab" blacklist

In January 1991 and thereafter, ALPA and the individual respondents printed and distributed 50,000 copies of a "scab" blacklist to all major commercial airlines on a world-wide basis. [Maj.Op.] [App. A, 5] [3d Amend. Compl.] [App. J, 187] [Sum.Judg.Order at 11] [App. B, 73]. This blacklist accused 2,242 Eastern pilots of being trade union "scabs" during the IAM sympathy strike ordered by the Eastern MEC. [3d Amend.Compl., Exhib. 1] [App. G, 107-168]. Approximately 1,400 names on the blacklist were Eastern ALPA union members[11] – over 40% of the 3400 total ALPA Eastern union membership. All of the petitioners [413 pilots] were on this blacklist [Maj.Op.] [App. A, 5] – with the Group I petitioners consisting of over 250 pilots. [3d Amend.Compl. Schd. AI & Exhib.1] [App. J, 186, 202-209].

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[11] ALPA, in its brief before the Eleventh Circuit, states that 831 trainee pilots were hired by August 7, 1989 [ALPA Br.] [App. H, 170] which were presumably non-union and placed on the scab blacklist. Subtracting that number from the 2,242 names on the blacklist leaves 1,411 union pilots who were placed on the blacklist.

### 4. Division of Eastern ALPA union membership over IAM sympathy strike

Contrary to the Eleventh Circuit's opinion, the record contains considerable evidence that the ALPA Eastern membership was divided from the outset on the advisability of this ill-fated strike on which no membership vote was ever taken – until it eventually became a union in total turmoil. As previously noted, ALPA's "scab" blacklist contained the names of over 40% of the total Eastern ALPA union membership. A non-binding opinion poll taken by the Eastern MEC before the strike indicates that 25% of those who expressed an opinion were opposed to the strike from the outset; moreover, ALPA has never indicated what percentage of the balance actually opined in favor of the strike from the two other options given on the poll. [Sum.Judg.Order] [App. B, 66].[12]

At the August 6, 1989 meeting, a non-binding, previously-unannounced show-of-hands "vote" was taken in which [according to ALPA] 686 union members – a mere 20% of the total 3,400 Eastern ALPA membership – indicated their support of the strike. [ALPA Br.] [App. H, 171 n. 8]. After this meeting, at which Bavis had directed the pilots to return to work, over 450 striking Eastern pilots [more than 13% of the 3400 Eastern ALPA membership] crossed the picket line the next day and the days that immediately followed – a traumatic event that ALPA has since referred to as "Black Sunday." [R. 25-443; pls' exhib. presented at Sum.Judg.Hearing] [App. I, 175, 178].

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[12] The balance [75% of the 80% who responded] either opined that they were willing to give up their vote on the issue to the MEC or were in favor of the strike – with no percentage breakdown given on each of these two choices. [Dissent] [App. A, 48-49].

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## REASONS FOR GRANTING THE PETITION

### A. FEDERAL LABOR LAW DOES NOT ENTITLE A LABOR UNION AND ITS LEADERS TO A SUMMARY JUDGMENT IN A STATE LIBEL ACTION BROUGHT AGAINST THEM FOR PUBLISHING 50,000 BLACKLISTS TO POTENTIAL EMPLOYERS ON A WORLD-WIDE BASIS ACCUSING ITS UNION MEMBERS AND OTHERS OF BEING TRADE UNION "SCABS" – WHERE, AS HERE, THESE WORKERS REFUSED TO HONOR AN ILLEGAL STRIKE UNILATERALLY CALLED BY UNION LEADERS WITHOUT TAKING A UNION MEMBERSHIP VOTE AS EXPRESSLY REQUIRED BY THE UNION CONSTITUTION

#### 1. Importance of the issue decided

The Eleventh Circuit Court of Appeals has held in a 2-1 decision below – with Judge Tjoflat dissenting – that federal labor law, under the doctrine of preemption, entitles a labor union and its leaders to a summary judgment in a state libel action for printing and distributing 50,000 blacklists to potential employers on a world-wide basis accusing its union members and others of being trade union "scabs" for not honoring a strike unilaterally called by union leaders – even though the strike may have been illegally called without conducting a union membership strike vote in express violation of the union constitution. [Maj.Op.] [App. A, 13-17].

One of the important considerations in determining whether this Court should exercise its certiorari jurisdiction is whether "a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court."[13] We submit that the Eleventh Circuit has decided a question of far-reaching national importance that has not been, but should be, settled by this Court. And settled in a way that allows the states to hold labor unions and their leaders accountable under state libel law for publishing irresponsible "scab" accusations against their members for defying otherwise illegal strikes unilaterally called by union leaders without taking a union membership vote in express violation of the union constitution. Surely, union leaders should not be allowed to escape the reach of state libel laws when, as here, they violate the fundamental voting rights of union members to determine the most important decision a union makes – whether to go out on strike – and then smear as "scabs" anyone who defies their arbitrary orders.

In particular, the Eleventh Circuit below concluded that it was factually true, and therefore not libelous, for a labor union and its leaders to call union members and others trade union "scabs" for not honoring a strike unilaterally called by union leaders – regardless of whether the strike was legal or illegal under the union constitution. This is so, the Circuit Court concluded, because a "scab" in the trade union sense is a person who does not honor a de facto union work stoppage – whether lawfully called or not – as the legality of a strike is a technical formality that forms no part of a "falsity" analysis of a "scab" accusation in a state libel action. Here is the Circuit Court's reasoning and holding on this point:

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[13] Rule 10(c), U.S. Sup.Ct. Rules.

> The pilots argue that ALPA was never legitimately on strike because it failed to conduct a formal secret ballot of its membership as required by ALPA's Constitution and By-Laws. Contending that the strike was illegally called, the pilots assert that there was no valid strike, that they cannot be considered to have worked when their union was striking, and that thus they cannot be considered as "scabs."
>
> The pilots argue that falsity should be assessed in this case based on the technical legalistic definition of "strike" and whether this "strike" was called legally under ALPA's Constitution and By-Laws. Their argument, however, misses the whole point of *Letter Carriers, Linn* and *Bresler's* mandates to consider the surrounding circumstances and reasonable understanding of the supposedly defamatory remarks and not the strictly legalistic or literal interpretation of the words used. * * * *As a reasonable reader would have understood, a "scab" of "Eastern of the Strike of '89" was a person who returned to work during the well-publicized 1989 pilots massive work stoppage designed to enforce compliance with demands made on an employer. The truth or falsity of the label "scab" turns not on a highly formalistic, legal analysis of the validity of the strike itself under ALPA's*

> *constitution but on a reasonable readers perception of this work stoppage as a "strike."* Thus, ALPA's describing Plaintiffs as "scabs" was not false. * * *
>
> Similarly, ALPA's listing of these pilots as "scabs" during the 1989 strike was not an accusation that ALPA's leadership called the sympathy strike in the strict, legal manner provided for under its Constitution and By-Laws, its Administrative Manual, and its other rules. *Instead, placing these pilots on the "scabs" list was an allegation that they worked during the union's called work stoppage and was factually true. A reasonable reader would understand the pilots on ALPA's "scab" list to be the pilots who returned to work across union picket lines during the 1989 work stoppage. In assessing falsity of "scabs" in this libel suit, how a labor strike must be called under a particular union's constitution, by-laws and rules, and whether this labor strike was legally called thereunder was simply not part of the generally accepted definitions of a "scab" or a "strike" that inform the analysis in a libel claim – much less part of the reasonable reader's concern in reading the 1989 "scabs" list.*

[emphasis added] [footnotes omitted] [Maj.Op.] [App. A, 15-17].

We strongly disagree with this analysis because, in our view, a "scab" in the trade union sense is *inter alia* one who refuses to honor a *union-authorized* strike – not, as here, an illegal strike called at the whim of union leaders. Indeed, we think that a reasonable reader of such a scabbing accusation would assume this to be true – especially when the accusation is made, as here, by a union. In this connection, we agree with the Eleventh Circuit that "[t]he pertinent definition of [a trade union] 'scab' " is "one who refuses to strike or returns to work before a strike has ended." [Maj.Op.] [App. A, 14] [quoting from Webster's Third International Dictionary 2022 (1986)]. But obviously implied in that definition is that the strike in question was *union-authorized,* not an illegal strike unauthorized by the union membership. Otherwise, the accusation carries no negative connotation that the alleged "scab" did anything contrary to the union membership's interests. Indeed, Judge Tjoflat, in dissent below, expressly so concluded:

> In this case, we must assume that ALPA intended, through the publication of the scab list, to convey that its strike was legal. A contrary assumption would mean that ALPA published a list of all the pilots who worked during a strike it illegally ordered. Although it is theoretically possible that ALPA wanted to convey such a message, it is highly unlikely, for such a message would only harm the union.
>
> Further, the scab list was distributed to [other airlines and] pilots at other airlines and was – by ALPA's own admission – intended to make it difficult for the named pilots to obtain employment with other airlines. If the strike was illegally called, pilots' inclusion on the scab list would provide no basis for denying them employment. On the contrary, a pilot's refusal to participate in an illegal strike, called by union bosses acting outside the scope of their authority, would make the pilot a more attractive candidate for employment. Inclusion on the scab list would in no way demean the character of

> persons so included, but instead would be a badge of honor.
>
> Thus, in the context of this case, the scab allegation makes sense only if the strike was legally called, because only then would inclusion on the scab list carry a negative connotation. It was therefore a necessary assumption of the persons reading the scab list that the strike was legally called. This assumption was buttressed by the fact that the scabbing charge was being made by a union, in a publication distributed by the union pursuant to a formal union resolution. Under these circumstances, a reasonable reader undoubtedly would assume that the persons on the scab list had refused to participate in a valid, union-authorized strike. This assumption, however, was false. As demonstrated in the preceding section, the strike was not called in accordance with the union's Constitution and By-Laws, and was therefore invalid. Consequently, the scab allegation was false, and the appellants have established the falsity element of their libel claim.

[footnote omitted] [App. A, 43-44].

Nonetheless, under the Eleventh Circuit's holding, labor unions and their leaders may with impunity unilaterally call and conduct an illegal strike without taking a union membership strike vote in express violation of the union constitution – accuse any of its members of being a trade union "scab" if the member refuses to honor this illegal strike – and are protected by federal labor law from any legal accountability to its members under state libel laws for making such an accusation. This, we submit, constitutes a breath-taking judicial approval of arbitrary union power with far-reaching national implications. The decision, in effect, gives unbridled authority to union leaders throughout the country to make scabbing accusations against union members who have the courage to defy a strike that union leaders have illegally called in complete disregard of the fundamental voting rights of the union membership – which, as an aside, is hardly a "technical" legal deficiency, as the Eleventh Circuit concludes in its decision below. This is especially true in this case where the scabbing accusation was made by ALPA and its leaders in 50,000 blacklists published and distributed to all major commercial airlines on a world-wide basis to destroy the petitioners' careers as commercial airline pilots. This unjustified decision which sanctions a monumental injustice should not be allowed to stand – and should therefore trigger this Court's exercise of its certiorari jurisdiction.

### 2. Prior Supreme Court precedent

In two prior cases, this Court has considered the extent to which state libel laws are applicable in a labor dispute, the last case having been decided over 25 years ago in 1974. This Court, however, has never addressed the specific issues presented by this case. We submit the time has come for the Court to do so.

In particular, we think the states must be given some leeway to redress through their libel laws the horrendous reputational and economic damage inflicted by labor unions on their members and others through the union's publication of reckless "scab" falsehoods in a labor dispute – as vividly shown in this case. Without dispute, federal labor law leaves these petitioners and other similarly-situated union members with no administrative remedy for such defamation. It should not also leave these workers remediless under state libel law.

In the first of these cases, this Court in *Linn v. United Plant Guard Workers of America, Local 114,*[14] decided that federal labor law partially preempted the application of state libel laws in a labor dispute – but allowed such libel actions if the libel met the *New York Times Co. v. Sullivan*[15] standard. In particular, the Court held "where either party to a labor dispute circulates false and defamatory statements during a union organizing campaign, the court does have jurisdiction to apply state remedies [i.e. state libel law] if the complainant pleads and proves that the statements were made with [actual] malice and injured him."[16] Indeed, the Court observed:

> But it must be emphasized that malicious libel enjoys no constitutional protection in any context. After all, the labor movement has grown up and must assume ordinary responsibilities. The malicious utterance of defamatory statements in any form cannot be condoned, and unions should adopt procedures calculated to prevent such abuses.[17]

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[14] 383 U.S. 53 (1966).

[15] 376 U.S. 254 (1964).

[16] *Linn*, 383 U.S. at 55.

[17] *Linn*, 383 U.S. at 63.

In the second of these cases, this Court in *Old Dominion Branch No. 496, Nat'l Ass'n of Letter Carriers v. Austin,*[18] expanded the *Linn* holding beyond union organizing campaigns to include any labor dispute "where the policies of the federal labor law leading to protection for freedom of speech are significantly implicated."[19]

A state libel claim arising out of a labor dispute may, therefore, be maintained and is not preempted by federal labor law – if three elements are pled and proven:

> (1) the statements sued upon must be false and defamatory as to the plaintiff;[20]
>
> (2) the defamatory statements must be published by the defendant with "actual malice" – that is with knowledge of its falsity or with utter disregard whether it was true or false;[21]
>
> and
>
> (3) the plaintiff must be actually injured by the defamatory statements – which damage "may include general injury to reputation, consequent mental suffering, alienation of associates, specific items of pecuniary loss, or whatever form of harm would be recognized by state tort law."[22]

Directly related to the issues presented by this case, this Court in *Linn* expressly held that calling a person a "scab" in a labor dispute is *not* an actionable libel under this standard *if,* in fact, the person is a "scab" under the commonly accepted trade union definition of that term. The stated rationale for this result was that (a) "[t]he sine qua non of recovery for defamation in a labor dispute under *Linn* is the existence of falsehood;" (b) "the only factual statement in the disputed publication is the claim that [plaintiffs] were scabs [in the trade union sense];" and (c) "naming the [plaintiffs] as scabs was [therefore in this case] literally and factually true."[23] Thus, the Court concluded that calling a person a "scab" who refused to join a union was not an actionable libel because the statement was true. One definition of a trade union "scab" is a person who refuses to join a union, and this was true of the *Linn* plaintiff. The Court, however, was careful to point out that if the "scab" accusation was *not* true in the trade union sense, a different result might obtain:

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[18] 418 U.S. 264 (1974).

[19] *Letter Carriers,* 418 U.S. at 279.

[20] *Linn,* 383 U.S. at 55.

[21] *Letter Carriers,* 418 U.S. at 281-82.

[22] *Linn,* 383 U.S. at 65.

> This is not to say that there might not be situations where the use of this writing [containing a "scab" accusation] or other similar rhetoric in a labor dispute could be actionable, particularly if some of its words were taken out of context and used in such a way as to convey a false representation of fact. [citation omitted] But in the context of this case, no such factual representation can be reasonably inferred, and the publication is protected under the federal labor laws.[24]

Accordingly, the issue for the Court's consideration in this case is whether accusing the petitioners of being "scabs" in ALPA's 50,000 blacklists published on a world-wide basis conveyed to the reasonable reader a false representation of fact – namely that the petitioners had refused to honor a *union-authorized* strike – when, in fact, the strike was not union-authorized, as it was illegally called without taking a union membership secret ballot vote as expressly required by the union constitution. We submit this is an extremely important issue with nationwide implications that should be decided by this Court.

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[23] *Letter Carriers,* 418 U.S. at 283-84.

[24] *Letter Carriers,* 418 U.S. at 286.

### 3. ALPA's IAM sympathy strike was illegal

Without dispute, the Eastern MEC leaders unilaterally called the 1989 IAM sympathy strike without taking a secret ballot strike vote of the ALPA Eastern union members. The ALPA Constitution, however, *expressly* gives union members the right to a secret ballot vote on a strike before it is called. Article I, Section 25 of the ALPA Constitution could not be any clearer:

> *When a suspension or withdrawal of service [i.e. a strike] is called for in compliance with the requirements of the Constitution and By-Laws or the Policy Manual, the members will be balloted before such action may be taken.* Association general balloting procedures will be used.

[emphasis and brackets added] [Maj.Op.] [App. B, 18 n. 12]. Article IV, Section 2B of the ALPA Constitution, in turn, provides that a union membership strike vote shall be by secret ballot:

> *The approval by a majority vote of the Master Executive Council on an airline with the advice of the President [of ALPA] is mandatory before a strike vote of the members of an airline may be taken. This*

> *membership strike vote shall be by secret ballot. . . . A simple majority of the valid ballots returned shall govern.*

[emphasis added] [Maj.Op.] [App. A, 18 n. 12].

Not only do these constitutional provisions give ALPA members the right to vote on any strike that the MEC calls, there is no exception made for any particular type of strike – including a sympathy strike. As Judge Tjoflat correctly observed in dissent below:

> Reading these provisions together, it appears indisputable that the ALPA Constitution and By-Laws requires a vote of the membership before a strike may be called * * *
>
> Likewise, there is nothing in the text of the Constitution and By-Laws that distinguishes among types of strikes – understandably so, given that a strike has the same impact on labor and management regardless of the reason why it is called – and it is therefore unreasonable for ALPA now to claim that the strike provisions in its Constitution and By-Laws refer only to primary strikes.

[App. A, 41-42]. Accordingly, ALPA's 1989 IAM sympathy strike was entirely illegal as it was admittedly conducted without conducting a secret ballot union membership vote in express violation of the ALPA Constitution.

The Eleventh Circuit, however, concluded in an alternative holding below that the ALPA sympathy strike was lawfully called. The basis for this alternative holding was that ALPA has consistently interpreted the above constitutional provisions to be inapplicable to sympathy strikes. [Maj.Op.] [App. B, 18-24]. Admittedly true. In flat contradiction to its own Constitution, the ALPA union leadership for the past thirty years has unilaterally arrogated to themselves, by administrative fiat, the right to unilaterally call sympathy strikes without taking a union membership vote.[25]

Beyond that, ALPA in its brief before the Eleventh Circuit below states that the union "typically *(but not always)* utilizes these [voting] procedures to conduct union membership votes in primary economic strikes." [ALPA Br.] [App. H, 172]. Consequently, ALPA has not only ignored the constitutional rights of its members to vote in sympathy strikes, but apparently in some primary strikes as well. Contrary to the Eleventh Circuit's conclusion, however, this cynical "interpretation" of the ALPA Constitution is in utter disregard of the express constitutional rights of union members and is entitled to no deference whatever.[26] It is done in bad faith, is utterly implausible, and is patently unreasonable. As stated by Judge Tjoflat in dissent below:

> The majority points out that, for over thirty years, ALPA has interpreted its Constitution and By-Laws as not requiring a membership vote for a sympathy strike. This tells us merely

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[25] "The decision to honor or not honor picket lines of other crafts shall be left to the discretion of the President and the MEC of the carrier involved." ALPA Administrative Manual, Part 4, Section D. [Maj.Op.] [App. A, 20].

[26] See *Dow v. United Brotherhood of Carpenters and Joiners of America*, 1 F.3d 56, 58 (1st Cir. 1993), and authorities collected (courts generally defer to a union's interpretation of its governing documents unless the interpretation is patently unreasonable or implausible).

> that ALPA's interpretation has been consistent, not that it is reasonable.
>
> Equally irrelevant to the question of the legality of the strike is the fact that ALPA's interpretation is included in ALPA's Administrative Manual; the ALPA Board of Directors [the author of the manual] has the power to *interpret* and *apply* the ALPA Constitution, but not to *ignore* it. Otherwise, the Constitution and By-Laws would be no more than default provisions, subject to revision at the whim of the Board of Directors.

[emphasis in original] [App. A, 42 n. 9].

More to the point, the fact that the ALPA union leadership has gotten away with its despotic practice of refusing union membership votes in sympathy strikes – and apparently some primary strikes as well – for the past thirty years does not, as urged, make the practice democratic, plausible or reasonable. As surely the last century has taught us, the arbitrary exercise of power by either the government or private combines never improves with age. At long last, the ALPA union membership has called its leadership to account, and this leadership cannot escape this accounting by claiming that they have always done it this way.

### 4. "Actual Malice" standard satisfied

Contrary to the Eleventh Circuit's conclusion, there is sufficient evidence in this record from which a jury could reasonably conclude that ALPA and its leaders published the false and defamatory accusations in this case with "actual malice" – that is, with knowledge of such falsity or in reckless disregard of whether such accusations were true or false. As pointed out by Judge Tjoflat in dissent below:

> "Reckless disregard," in this context, means that the defendant made the allegation despite "entertain[ing] serious doubts as to the truth thereof." *St. Amant v. Thompson*, 390 U.S. 727, 730 . . . (1968).

[App. A, 45]. In this connection, the respondents surely knew – or at least must have entertained serious doubts – that its scabbing allegation was false, that the ALPA Eastern MEC had no legal authority to unilaterally call a strike without first taking a union membership strike vote as expressly required by the union constitution, and that the petitioners therefore had not defied a *union-authorized* strike. This is so based on four factors outlined by Judge Tjoflat in dissent which we entirely adopt. [App. A, 46-51].

First, the ALPA Constitution could not be any clearer: a union-authorized strike requires a strike vote of the membership. Even a lay person would have known this.

> *Assuming, therefore, that the ALPA leadership read its own Constitution, it must have known that a vote was required. This seems a fair assumption considering the substantial legal significance given to voting rights contained in a union's Constitution and By-Laws.* Federal law provides a cause of action against a union for denying a member the right to vote, if the right to vote is contained in the union's Constitution and By-Laws. (citations omitted). ALPA is no stranger to this cause of action; it has been sued on the basis of federal voting rights requirements on numerous occasions, both before and after the events giving

> rise to this lawsuit. * * * Finally and more generally, federal law imposes a "duty of fair representation" on unions that requires them always to act in their members' best interests (citation omitted); such a duty suggests that unions are expected to be aware of their constitutional obligations to their members. These obligations include, I submit, the duty not to defame as "scabs" members who refused to participate in an illegal strike. *In light of this body of law – and ALPA's known familiarity with it – it would be difficult for ALPA to claim that it was unfamiliar with the voting requirements contained in its own Constitution and By-Laws, or that it honestly thought it could ignore the requirements of the Constitution and By-Laws on the basis of its own internal administrative policies.*

[emphasis added] [App. A, 46-48].

"Second, the idea that the union leadership would not be required to poll the membership before calling a strike is so implausible that it seems unlikely that ALPA actually believed it." [Dissent] [App. A, 48]. Indeed, "[s]uch an approach would deprive workers of any direct input into the most important decision that a union makes." *Id.*

Third, the non-binding opinion poll taken by ALPA just prior to calling the strike "suggests that ALPA had serious doubts regarding its power to call a strike unilaterally." [Dissent] [App. A, 48]. This is so because the poll included an option in which members could opine that "[m]y elected MEC representatives are best qualified to make this decision, if and when an IAM strike occurs, and I will abide by their decision." [Dissent] [App. A, 49]

As Judge Tjoflat observed in dissent, "[t]he availability of the third option could lead a reasonable jury to conclude that ALPA knew (or at least suspected) that it could not call a strike on its own, and that the purpose of the poll was to encourage the members to abdicate their voting rights." *Id.*

Finally, ALPA and its leaders conducted no investigation whatever to determine whether their "scab" allegation was true – whether these petitioners had defied a legal, union-authorized strike – before sending out their 50,000 blacklists on a world-wide basis. In particular, they sought no legal advice on the matter at all. Moreover, ALPA was under no rush to issue its blacklists when they did, as there was no pressing need for an immediate publication. And as Judge Tjoflat noted in dissent below:

> When there is no pressing need for immediate publication of a defamatory allegation, actual malice may be inferred if the investigation given to the allegation is grossly inadequate under the circumstances. See *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 692-93 . . . (1989); *Vandenburg v. Newsweek, Inc.*, 441 F.2d 378, 380 (5th Cir. 1975).

[footnote omitted] [App. A, 49].

## B. FEDERAL LABOR LAW DOES NOT ENTITLE A LABOR UNION AND ITS LEADERS TO A SUMMARY JUDGMENT IN A STATE LIBEL ACTION BROUGHT AGAINST THEM FOR PUBLISHING 50,000 BLACKLISTS TO POTENTIAL EMPLOYERS ON A WORLD-WIDE BASIS ACCUSING ITS UNION MEMBERS OF BEING TRADE UNION "SCABS" – WHERE, AS HERE, THESE UNION MEMBERS HONORED A PREVIOUSLY-CALLED ILLEGAL UNION STRIKE, AND LATER RETURNED TO WORK ONLY WHEN THEIR LOCAL UNION PRESIDENT DIRECTED THEM TO DO SO

Compounding the national significance of the issue decided by the Eleventh Circuit is the Court's refusal to accord any libel remedy under state law to even those union members who initially honor a union leadership-called strike, although an illegal one, but later return to work at the direction of the local union president. These are the Group I petitioners in this case – over 250 Eastern pilots. Not even these otherwise loyal union members have any libel remedy under the Circuit Court's decision below. The union may with impunity label these union members as trade union "scabs" in 50,000 blacklists distributed to all the major commercial airlines in the world and destroy their careers.

Indeed, the Circuit Court below acknowledged that "a jury issue exists" on whether the Eastern ALPA Chairman [Jack Bavis] directed the striking Eastern pilots to return to work at the critical August 6, 1989 union meeting because "seventeen pilots filed affidavits stating that Bavis urged pilots to return to work at the August 6 meeting." [Maj.Op.] [App. A, 28]. Nonetheless, the Circuit Court held that it was still true as a matter of law – and even if false, no "actual malice" was involved – for ALPA and its leaders to call the Group I petitioners trade union "scabs." This is so, the Circuit Court reasoned, because ALPA Eastern MEC informed the union members six days later, on August 12, 1989, that the strike was still on, and the work stoppage continued thereafter. [Maj.Op.] [App. A, 28-29]. Of course, by that time it was too late for the Group I petitioners, as they had all returned to work prior to August 12, 1989, and had already made the scab blacklist from which they could not be removed.

But no matter. They too are trade union "scabs." They too have no libel action remedy against their union for this incredible outrage. Why? Because these petitioners "crossed" the "hardliner" union leaders at the Eastern ALPA MEC who wanted to continue this ill-advised strike – notwithstanding the contrary directive of the local union president at Eastern whom the "hardliners" promptly removed and later filed charges against for issuing this very directive. Moreover, the respondents knew that the local union president had directed the Group I petitioners to return to work. Nonetheless, they intentionally or at least recklessly smeared these loyal union members as trade union "scabs" when in fact these petitioners were no such thing – as the respondents surely knew. And who got irreparably hurt in this senseless union leadership struggle for power? Whose careers as commercial airline pilots were totally destroyed? The average union member. The member who followed the rules and obeyed their union leaders. The Group I petitioners. These people too have no state libel remedy under the Eleventh Circuit's decision. We submit that this totally unjustified decision which sanctions a monumental injustice should not be permitted to stand – as it has national implications that are inimical to a democratic union movement and a democratic society.

◆

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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## APPENDIX A

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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No. 97-5587

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D.C. Dokcet No. 91-2679-CV-EBD

LARRY DUNN, TOM DUCKWORTH, et al.,
Plaintiffs-Counter-defendants-Appellants,

versus

AIR LINE PILOTS ASSOCIATION,
HENRY DUFFY, et al.,
Defendants-Counter-claimants-Appellees.

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Appeals from the United States District Court
for the Southern District of Florida

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(October 25, 1999)

Before TJOFLAT, DUBINA and HULL, Circuit Judges.

HULL, Circuit Judge:

A group of airline pilots allege that the Air Line Pilots Association – a labor union – libeled them by placing them on a "scabs" list. The pilots also assert that by listing them as "scabs," the union intentionally interfered with their business relationships with other airlines. The district court dismissed the tortious interference claim for failure to state a claim for relief. As for the libel claim, the court held on summary judgment that the description of the pilots as "scabs" was not false because the pilots admit they crossed union picket lines and worked during the 1989 strike of Eastern Air Lines. The district court also held there was no evidence of actual malice. We affirm.

## I. FACTS

### A. Eastern Pilots' Sympathy Strike

The Air Line Pilots Association ("ALPA") is a labor union that represents airline pilots from a number of commercial airlines. Within each airline, ALPA operates through a Master Executive Council ("MEC"), a board of elected pilot representatives that makes union policy decisions relating to that airline.

In early 1989, Eastern Air Lines, Inc. ("Eastern" or "EAL") reached an impasse in its negotiations with the International Association of Machinists ("IAM"), and IAM began to consider a strike. At its February 1989 meeting, the Eastern MEC adopted a formal resolution declaring the MEC's intention to direct pilots to honor IAM picket lines in the event of an IAM strike.

The Eastern MEC also directed its officers to survey the membership to measure pilot support for a sympathy strike to provide guidance to the MEC's strike deliberation. On February 16, 1989, MEC Chairman Bavis sent a letter to each Eastern pilot enclosing a copy of the MEC resolution expressing support for the IAM. The following day, the Eastern MEC sent a "ballot poll card" to each Eastern pilot. Nearly seventy-five percent of the 2,165 pilots who returned the ballot poll cards responded that they would honor IAM picket lines outright or would support the MEC's decision to call a sympathy strike.

The Eastern MEC met again on March 1, 1989. After reviewing the results of the pilot survey and conducting a last-minute telephone poll revealing even stronger pilot support, the MEC unanimously adopted a resolution "that all Eastern Air Lines pilots shall honor the International Association of Machinists picket lines and shall refuse to cross picket lines and that all pilots shall refrain from performing any work for EAL during the strike."

On March 4, 1989, the IAM struck Eastern, and ALPA commenced its sympathy strike. Over ninety percent of the approximately 3,400 Eastern pilots initially joined the sympathy strike and refused to cross IAM picket lines.

### B. "Scabs" List

Eastern encouraged pilots to cross picket lines by promising that any pilot who returned to work would receive promotions to higher-paying positions. In response, on March 28, 1989, the Eastern MEC unanimously adopted a formal resolution to "publish a finalized list of strikebreaking pilots at the conclusion of the ALPA sympathy strike" and to bring internal union charges under ALPA's constitution against ALPA members who crossed the picket lines. Individuals were placed on this list of working pilots only upon receipt of two confirmed reports that they had crossed ALPA picket lines, and after being provided with "an opportunity to refute the allegation" that they had crossed picket lines to fly for Eastern.

The Eastern MEC, the strike operations committee, and striking pilots repeatedly advised working pilots that the union would regard them as "scabs" if they crossed ALPA's picket lines. For example, a July 31 MEC strike committee report reminded pilots that, "[a] pilot becomes [a] scab at [the] moment he signs to go back to work."

### C. Pilots Vote to Continue Strike

Meanwhile, the Eastern MEC was engaged in an internal debate about whether to continue the Eastern pilots' sympathy strike. Initially, the MEC convened on August 1, 1989, and met for five consecutive days to review the situation. Following substantial discussion, two "straw" polls of the MEC members established that a majority favored continuation of the sympathy strike; thus, the MEC unanimously adopted a resolution to continue the sympathy strike pending membership meetings at each local pilot base.

The first of these local pilot meetings was held on August 6 in Miami and broadcast to other cities. As detailed later, the parties dispute what the ALPA and Eastern MEC leadership said at this August 6 meeting about returning to work. However, it is undisputed that the August 6 meeting concluded with the Miami-based Eastern pilots voting overwhelmingly, by a show of hands, to continue the sympathy strike. Subsequent local pilot meetings yielded the same result. From August 6 to 9, ALPA held pilot meetings at communication centers throughout the Eastern system. At each meeting, with one exception, the pilots voted overwhelmingly to continue the sympathy strike.

On August 11, 1989, the Eastern MEC made an official decision to continue the sympathy strike. ALPA President Duffy notified all ALPA pilots of the MEC's decision by letter, explaining: "Over the past week . . . the Eastern pilots have reviewed their options and have voted overwhelmingly not to return to work without a structured settlement of the sympathy strike." On August 12, 1989, the strike operations committee likewise confirmed that "THE STRIKE IS ON!! THE PICKET LINE REMAINS!!" The pilots' overwhelming vote to remain on strike was widely reported in the media and in internal ALPA communications.

On November 22, 1989, the Eastern MEC voted to end the pilots' sympathy strike, despite the fact that the IAM strike had not ended. Accordingly, the MEC made an unconditional offer – on behalf of all pilots – to return to work.

During the sympathy strike, ALPA had compiled a "scabs" list of pilots who crossed union picket lines to fly for Eastern. ALPA added the names of other crossover pilots and new hires over time. The list was available to anyone who wanted it. In 1991, ALPA produced and distributed 50,000 copies of the "scabs" list. This final publication was entitled "The Scabs of Eastern of the Strike of '89."

The Plaintiffs-Appellants in this case are all pilots who were on this list. They brought suit against ALPA,[1] alleging, *inter alia*, that the publication of the "scabs" list constituted libel and that it intentionally interfered with their business relationships with other airlines.[2] The district court dismissed the tortious interference allegation for failure to state a claim under Florida tort law.[3] The court granted summary judgment to ALPA on the libel claim, concluding that the pilots had not shown the "scabs" list was false or evidence of actual malice, as required for a libel claim.[4] The pilots now appeal these rulings.

## II. STANDARD OF REVIEW

This Court reviews *de novo* the dismissal of a complaint for failure to state a claim, construing all allegation's in the complaint as true and in the light most favorable to the plaintiff. *Lowell v. American Cyanamid Co.*, 177 F.3d 1228, 1229 (11th Cir. 1999); *Harper v. Thomas*, 988 F.2d 101, 103 (11th Cir. 1993). A complaint may not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts which would entitle plaintiff to relief. *Hall v. Coram Healthcare Corp.*, 157 F.3d 1286, 1288 (11th Cir. 1998); *Terry v. Cook*, 866 F.2d 373, 375 (11th Cir. 1989).

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[1] The Plaintiffs-Appellants also sued certain individual executives in ALPA and in the Eastern MEC. In this opinion, we refer to all of the Defendants-Appellees jointly as "ALPA" or the "Defendants."

[2] The Plaintiffs-Appellants filed suit in Florida circuit court; ALPA removed the case to the United States District Court for the Southern District of Florida on the ground that certain of the pilots' claims (not at issue here) were governed by the federal Railway Labor Act. *See* 28 U.S.C. § 1441 (1994).

[3] The parties agree that Florida law controls this dispute except to the extent it is preempted by federal law.

[4] There was a summary judgment motion filed by ALPA and Defendants Duffy and Babbit on April 12, 1996, and a separate summary judgment motion filed by Defendants Copeland, Breen, Baldwin, and Petachenko on April 22, 1996, which incorporated the first by reference. The two motions raise nearly identical issues.

Our review of a summary judgment order is also *de novo*. *See Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 465 n.10, 112 S.Ct. 2072, 2081 n.10, 119 L.Ed.2d 265 (1992); *Harris v. H & W Contracting Co.*, 102 F.3d 516, 518 (11th Cir. 1996); *Carriers Container Council v. Mobile S.S. Assoc., Inc.*, 896 F.2d 1330, 1337 (11th Cir. 1990). We review all evidence and all factual inferences therefrom in the light most favorable to the non-moving party.

## III. TORTIOUS INTERFERENCE CLAIM

We first consider the pilots' claim for tortious interference with business relationships. ALPA moved to dismiss the claim under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted; the district court granted the motion. *See Dunn v. Air Line Pilots Ass'n*, 836 F.Supp. 1574, 1584 (S.D. Fla. 1993). The pilots challenge this dismissal.[5]

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[5] The pilots filed three different complaints in this suit; each complaint modified the prior complaint. The interference with business relationships claim was part of the pilots' second complaint. ALPA contends that the pilots waived their right to

Under Florida law, the elements of an interference with a business relationship claim are: (1) the existence of a business relationship, (2) the defendant's knowledge of that relationship, (3) an intentional and unjustified interference with the relationship, and (4) injury resulting from the breach of the relationship. *See Tamiami Trail Tours, Inc. v. Cotton*, 432 So.2d 148, 151 (Fla. 1st DCA 1983), *aff'd in relevant part*, 463 So.2d 1126, 1127 (Fla. 1985). A "business relationship," for purposes of the first prong, does not require the existence of a contractual agreement. *See id.* It does, however, require a relationship with a particular party, and not just a relationship with the general business community. *See Ethan Allen, Inc. v. Georgetown Manor, Inc.*, 647 So.2d 812, 815 (Fla. 1994). In their complaint, none of the pilots alleged the existence of a business relationship with a particular airline. They instead alleged that ALPA's publication of the scab list prohibited them from obtaining employment with any commercial airline – in other words, that it interfered with the pilots' ability to sell their labor to the general community. Such an allegation is insufficient to state a

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appeal the dismissal because after dismissal of that claim they failed to replead interference with business relationships in their third (and final) complaint. We disagree. The pilots presumably had nothing to add to their interference with business relationships claim; consequently, repleading would have been futile and would have resulted only in a second dismissal under Rule 12(b)(6). For this reason, we do not require a party to replead a claim following a dismissal under Rule 12(b)(6) to preserve objections to the dismissal on appeal. *See Wilson v. First Houston Inv. Corp.*, 566 F.2d 1235, 1237-38 (5th Cir. 1978), *vacated on other grounds*, 444 U.S. 959, 100 S.Ct. 442, 62 L.Ed.2d 371 (1979).

claim for intentional interference with a business relationship; we therefore affirm the district court's dismissal of this claim.

## IV. LIBEL CLAIM

Turning to the pilots' libel claim, we initially discuss applicable Supreme Court precedent and why the "scabs" list was not false. We next explain why the district court correctly held that the 1989 strike was lawfully called and why ALPA's interpretation of its governing rules is entitled to judicial deference. Finally, we address the lack of evidence of actual malice.

### A. Supreme Court Precedent

Under Florida law, libel is defined as the unprivileged written publication of false statements that cause injury. *See Delacruz v. Peninsula State Bank,* 221 So.2d 772, 775 (Fla. 2d DCA 1969). However, the Supreme Court has instructed that federal labor law partially preempts state libel law because national labor policy favors free speech, open communication, and robust debate in labor disputes. *Old Dominion Branch No. 496, Nat'l Ass'n of Letter Carriers v. Austin,* 418 U.S. 264, 273 (1974); *Linn v. United Plant Guard Workers Local 114,* 383 U.S. 53, 57-58 (1966). Therefore, when published in the context of a labor dispute, a defamatory statement concerning a plaintiff is actionable only if a plaintiff shows the statement was made with actual malice. *Linn,* 383 U.S. at 65 (applying malice requirement to statements made during union organizing campaign); *Letter Carriers,* 418 U.S. at 273-281 (interpreting *Linn* to apply to all labor disputes).

To show "actual malice" a plaintiff must establish by clear and convincing evidence that the speaker made the statement " 'with knowledge that it was false or with reckless disregard of whether it was false or not.' " *Letter Carriers,* 418 U.S. at 281 (quoting test adopted by analogy from *New York Times v. Sullivan,* 376 U.S. 254, 280, 285-86 (1964) (setting out standard for First Amendment restrictions on state defamation law and stating that plaintiff bears the burden of proving actual malice with "convincing clarity")); *see also Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 342 (1974) (clarifying that *New York Times* requires "clear and convincing proof" of actual malice). In addition, "[b]efore the test of reckless or knowing falsity can be met, there must be a false statement of fact." *Letter Carriers,* 418 U.S. at 284. Thus, a defamation claim escapes labor-law preemption only if (1) there is a false statement of fact; and (2) the plaintiff proves actual malice by clear and convincing evidence. *See Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242 (1986) (explaining how *New York Times*'s requirement of clear and convincing proof affects the court's inquiry and presents a formidable obstacle at summary judgment).

The Supreme Court has emphasized that the epithet "scab" is "commonplace" in labor disputes and is a factual allegation that will support a libel claim but only if false and made with actual malice. *Linn,* 383 U.S. at 60-61; *Letter Carriers,* 418 U.S. at 282. Indeed, the Supreme Court's *Letter Carriers* decision involved a "scab" defamation suit where the Court explained that "the only factual statement in the disputed publication is the claim that appellees were scabs." *Letter Carriers,* 383 U.S. at 285. The Supreme Court examined the context in which "scabs" was used and held that naming the appellees as "scabs" was factually true and therefore appellees' claims failed, stating:

> Rather than being a reckless or knowing falsehood, naming the appellees as scabs was literally and factually true. One of the generally accepted definitions of "scab" is "one who refuses to join a union," Webster's Third New International Dictionary (unabridged ed.1961), and it is undisputed that the appellees had in fact refused to join the Branch.

*Id.* at 282-83. In *Letter Carriers,* there was not even a union organizing campaign, much less an ongoing strike or work stoppage. Yet, the Supreme Court held that the description "scabs" was not false even where used in the context of a union's simply gathering supporters.[6]

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[6] As noted by the dissent, the piece of trade union literature, entitled "Ode To A Scab," was on the front cover of the scab list in this case entitled "The Scabs of Eastern of the Strike of '89." Although the Supreme Court in *Letter Carriers* held the epithet "scab" is a factual allegation that will support a libel claim if false and made with actual malice, the Court clarified that the pejorative definition of what a "scab" is in Jack London's "Ode To A Scab" was "rhetorical hyperbole" and was entitled to protection under the federal labor laws. 418 U.S. at 285-86. The Court explained "[b]efore the test of reckless or knowing falsity can be met, there must be a false statement of fact. . . . " *Id.* at 284. However, according to the Court, the rhetoric in "Ode To A Scab" was "obviously used here in a loose, figurative sense to demonstrate the union's strong disagreement with the views of the workers who oppose unionization" and was not a representation of fact. *Id.* The Court

In *Letter Carriers,* the Supreme Court further explained that falsity in a libel case must be examined from the perspective or understanding of the reader. The Supreme Court followed the reasonable reader approach developed earlier in *Greenbelt Cooperative Publishing Association v. Bresler,* 398 U.S. 6 (1970). In *Bresler,* the defendants had characterized the position of the plaintiff in certain negotiations as "blackmail," and at trial, the plaintiff had recovered damages for libel on the theory that defendants knew he had committed no such criminal offense. The Supreme Court reversed, holding that this use of the word "blackmail" should not be legalistically construed as the commission of the criminal offense of "blackmail" but the way a reader would have reasonably perceived the word. In *Letter Carriers,* the Supreme Court quoted Justice Stewart's reasoning in *Bresler*:

> It is simply impossible to believe that a reader who reached the word "blackmail" in either article would not have understood exactly what was meant: it was Bresler's public and wholly legal negotiating proposals that were being criticized. No reader could have thought that either the speakers at the meetings or the newspaper articles reporting their words were charging Bresler with the commission of a criminal offense.

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further noted that Jack London's definition of a scab "has become a familiar piece of trade union literature; according to undisputed testimony in this case it has been published countless times in union publications over the last 30 years or more." *Id.* at 286.

*Letter Carriers*, 418 U.S. at 285-86 (quoting *Bresler*, 398 U.S. at 14). Applying this reasoning in *Letter Carriers*, the Supreme Court found a reasonable reader of the union's use of the term "traitor" would not understand the union "to be charging the appellees with committing the criminal offense of treason." 418 U.S. at 285.

The reasonable reader approach has been followed consistently by the Supreme Court and this Circuit. *See Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 515, 517 (1991) (inquiring into "the meaning a statement conveys to the reasonable reader" and explaining that a "statement is not considered false unless it 'would have a different effect on the mind of the reader from that which the pleaded truth would have produced.' ") (quoting R. Sack, *Libel, Slander, and Problems* 138 (1980)); *Keller v. Miami Herald Pub. Co.*, 778 F.2d 711, 716 (11th Cir. 1985) ("Appellant's strictly literal interpretation ignores the nature of a cartoon and how cartoons are traditionally understood by those who view them: '[Such an] interpretation does not construe [the cartoon] as the common mind would understand [it] but is tortured and extreme.' *Valentine v. C.B.S., Inc.*, 698 F.2d 430, 432 (11th Cir. 1983) (per curiam).").

### B. "Scabs" List Was Not False

Applying this precedent, we examine whether the "scabs" list was false. In assessing falsity, we place the "scabs" list in the context of the above undisputed events surrounding the 1989 strike and interpret the "scabs" list from the perspective or understanding of the reasonable reader.

As in *Letter Carriers*, our initial step is to examine the commonly understood definitions of "scab" and "strike." The pertinent definition of "scab" for this case is "one who refuses to strike or returns to work before a strike has ended."[7] Likewise, the commonly understood definition of "strike" in a labor context is "a temporary stoppage of work by a body of workers designed to enforce compliance with demands (as changes in wages, hours, or working conditions) made on an employer."[8] It is undisputed that the 1989 sympathy strike was designed to enforce compliance with such demands.

Thus, under the undisputed facts here, a reasonable reader of ALPA's list of "The Scabs of Eastern of the Strike of '89" would interpret it as a list of those pilots who crossed the union's picket lines and worked during the 1989 work stoppage. Because these pilots admit they crossed picket lines to work during that 1989 work stoppage, ALPA's listing them as "scabs" was factually true and the district court correctly granted summary judgment on their libel claims for failure to show falsity.[9] No reasonable jury could find otherwise.

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[7] The various definitions of a "scab" in the labor context are: "(1): one who refuses to join a union (2): a member of a union who refuses to strike or returns to work before a strike has ended (3): a worker who accepts employment or replaces a union worker during a strike (4): one who works for lower wages than or under conditions contrary to those prescribed by a union." Webster's Third New International Dictionary 2022 (1986). The definitions quoted are from the 1986 version of the dictionary, which was the current version when the "scabs" list was published in 1991. The definitions remain unchanged in the 1993 version of the same dictionary. *See* Webster's Third New International Dictionary 2022 (1993).

[8] Webster's Third New International Dictionary 2262 (1986).

The pilots argue that ALPA was never legitimately on strike because it failed to conduct a formal secret ballot of its membership as required by ALPA's Constitution and By-Laws. Contending the strike was illegally called, the pilots assert that there was no valid strike, that they cannot be considered to have worked when their union was striking, and thus that they cannot be considered as "scabs."

The pilots argue that falsity should be assessed in this case based on the technical, legalistic definition of "strike" and whether this "strike" was called legally under ALPA's Constitution and By-Laws. Their argument, however, misses the whole point of *Letter Carriers, Linn,* and *Bresler*'s mandates to consider the surrounding circumstances and reasonable understanding of the supposedly defamatory remarks and not the strictly legalistic or literal interpretation of the words used. It is undisputed that the strike called by ALPA's leadership resulted in a massive union work stoppage; that there were union picket lines; that as many as ninety percent of Eastern pilots refused to fly for Eastern initially; that a strike committee was set up and local communication centers were operating; that Plaintiffs returned to work during that work stoppage; and that the majority of pilots actually supported and voted overwhelmingly to continue ALPA's leadership's called work stoppage. Even though the pilots now contend that ALPA's leadership should have had a full membership vote by secret ballot first, it is undisputed that its union pilots actually struck Eastern and a massive work stoppage occurred. As a reasonable reader would have understood, a "scab" of "Eastern of the Strike of '89" was a person who returned to work during the well-publicized 1989 pilots' massive work stoppage designed to enforce compliance with demands made on an employer. The truth or falsity of the label "scab" turns not on a highly formalistic, legal analysis of the validity of the strike itself under ALPA's constitution but on a reasonable reader's perception of this work stoppage as a "strike." Thus, ALPA's describing Plaintiffs as "scabs" was not false.

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[9] The district court ruled that "the listing of the Plaintiffs on the scab list either is not a matter of fact, or is indeed factually correct. By common parlance, a 'scab' is 'one who works for less than union wages or on nonunion terms.' " 836 F.Supp. 1575, 1581 (S.D. Fla. 1993) (citing Webster's New Collegiate Dictionary 1021 (1979)). Because all Plaintiffs crossed picket lines, the district court further held that all Plaintiffs "crossing a picket line during a sympathy strike constitutes working on nonunion terms." *Id.*

Supreme Court precedent explicitly supports this conclusion. In *Letter Carriers*, addressing a union's allegation that the plaintiffs were guilty of "treason," the Supreme Court explicitly explained that the union's charge was not "false" merely because the plaintiffs were not guilty of "treason" in the technical sense. 418 U.S. at 285-86. Likewise, in *Bresler*, the Court explained that an allegation that the plaintiff had committed "blackmail" should be read in context as a statement that the plaintiff's bargaining position was unreasonable – not an accusation that the plaintiff had actually committed the criminal offense of blackmail. 398 U.S. at 14.

Similarly, ALPA's listing of these pilots as "scabs" during the 1989 strike was not an accusation that ALPA's leadership called the sympathy strike in the strict, legal manner provided for under its Constitution and By-Laws, its Administrative Manual, and its other rules. Instead, placing these pilots on the "scabs" list was an allegation that they worked during the union's called work stoppage and was factually true. A reasonable reader would understand the pilots on ALPA's "scabs" list to be the pilots who returned to work across union picket lines during the 1989 work stoppage.[10] In assessing falsity of "scabs" in this libel suit, how a labor strike must be called under a particular union's constitution, by-laws, and rules, and whether this labor strike was legally called thereunder are simply not part of the generally accepted definitions of a "scab" or a "strike" that inform the analysis in a libel claim – much less a part of the reasonable reader's concern in reading the 1989 "scabs" list.[11]

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[10] It strains credulity, as suggested by the dissent, that in the face of the massive work stoppage of 1989, the picketing, the polls of the pilots in favor of the strike, and the communications from ALPA about the ongoing nature of the strike that a reasonable reader would infer the suggestion of a strike called in strict conformance with ALPA's constitution simply because it was a union that used the term "scab." Additionally, there is no evidence in this record that any ALPA member during the course of the 1989 strike sought an injunction to halt the strike as illegally called under ALPA's constitution, but instead ALPA's pilots overwhelmingly voted to support the strike and actually struck Eastern.

[11] We found no published case applying *Letter Carriers* where defamation liability was imposed based on a "scab" allegation during an admitted labor dispute – much less on the dissent's novel theory that even though a strike occurred, the

### C. Strike Was Lawfully Called

In any event, the district court correctly held that ALPA's 1989 sympathy strike was lawfully called. ALPA's constitution does provide that members "will be balloted" before a "suspension of service" and that the majority vote of the MEC is required before "a strike vote of the members."[12] This provision is general and does not

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lack of a validly called strike renders a "scab" allegation false as a matter of law. The truth of the "scabs" list depends not on the legal validity of the strike but upon the reader's perception of the existence of a labor dispute, such as a strike, and of whether Plaintiffs-Appellants opposed the union during the labor dispute, such as by returning to work across union picket lines. As quoted above, the commonly understood definition of a strike is not a legalistic definition but is "a temporary work stoppage by a body of workers designed to enforce compliance with demands . . . made on an employer." *See* footnote 7 *infra.*

[12] ALPA's Constitution provides in Article I:

> SECTION 25 – SUSPENSION OF SERVICE
>
> When a suspension or withdrawal of service is called for in compliance with the requirements of the Constitution and By-Laws or the Policy Manual, the members will be balloted before such action may be taken. Association general balloting procedures will be used.

Article IV, Section 2(B), provides:

> SECTION 2 – JURISDICTION AND DUTIES OF MASTER EXECUTIVE COUNCIL
>
> B. The approval by a majority vote of the Master Executive Council on an airline with the advice of the President [of ALPA] is mandatory before a strike vote of the members of an airline may be taken. This membership strike vote shall be by secret ballot. . . . A simple majority of valid ballots returned shall govern.

distinguish between primary strikes and sympathy strikes.

However, ALPA's constitution also (1) vests its Board of Directors with authority to control and manage the business affairs of ALPA; (2) charges the Board with the authority to interpret and apply the terms of ALPA's constitution; and (3) provides that in the event of any dispute about the intent or meaning of its constitution, the Board's interpretation of the constitution shall govern.[13] ALPA's Board is also authorized to develop internal ALPA policies, which are contained in its Administrative

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[13] Article VII, Section 2, provides:

SECTION 2 – JURISDICTION AND DUTIES

The Board of Directors is the highest governing body of the Association. It shall be vested with the control of the Association, its general management and business affairs. Its decision, whether rendered by ballot or in session, shall be the final governing decision of the Association and shall be binding on the Executive Board, the Executive Committee, the Officers, and all members of the Association, subject to action of the Executive Board pursuant to Article V, Section 2, of this Constitution and By-Laws. The Secretary of the Association shall ballot the Board of Directors on any issue when petitioned by fifteen percent (15%) of the Board of Directors. In the event of any dispute arising out of the meaning or intent of these Constitution and By-Laws, the Board of Directors shall have the power to interpret the Constitution and By-Laws and such interpretation shall govern the Association in the conduct of its business and affairs.

Manual and are binding on all ALPA members. In particular, a section entitled "Strike Policy" in that Manual gives the MEC authority to declare a sympathy strike:

> D. PICKET LINES IN THE EVENT OF A STRIKE SOURCE – Board 1966; AMENDED – Board 1986
>
> 1. *The decision to honor or not honor picket lines of other crafts shall be left to the discretion of the President and the MEC of the carrier involved.*
>
> 2. No ALPA member shall cross another ALPA member's picket line in order to do struck work.

ALPA Administrative Manual, Part 4, Section D (emphasis added).

This Strike Policy has remained essentially unchanged since 1966. The unrebutted evidence in this case shows that for the past thirty years ALPA consistently has applied its constitution and this Strike Policy in the same manner as it did during the Eastern ALPA sympathy strike and has called sympathy strikes without a membership vote first.[14] The general language of this ballot provision has been interpreted by ALPA's Board for thirty years to apply to only primary strikes and

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[14] As Seth Rosen, ALPA's long-time Director of Representation, stated:

> In my employment with ALPA over the last 25 years, I have been involved in or had close personal knowledge of a number of occasions on which ALPA decided to engage in sympathy strikes. In particular, I have personal knowledge of the following occasions on which ALPA decided to engage in sympathy strikes:

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| Year | Air Carrier | Primary Strike By |
|---|---|---|
| 1971-72 | Hughes Air Corp. d/b/a Air West | Aircraft Mechanics Fraternal Ass'n |
| 1973 | Ozark Air Lines | Aircraft Mechanics Fraternal Ass'n |
| 1974 | Saturn Airways | Int'l Bhd. of Teamsters |
| 1977 | Trans Int'l Airlines | Int'l Bhd. of Teamsters |
| 1979 | Ozark Air Lines | Ass'n of Flight Attendants |
| 1985 | Pan American World Airways | Transport Workers Union |

> To the best of my knowledge, on none of the above listed occasions was a vote of ALPA members taken for the purpose of authorizing the decision to engage in a sympathy strike. Indeed, *I am not aware of any occasion on which a vote of ALPA members was conducted for the purpose of authorizing a sympathy strike.*

(emphasis added). In contrast, Mr. Rosen stated that ALPA's general practice has been to ballot members only prior to conducting a *primary* strike.

not to secondary strikes, also known as sympathy strikes.[15]

The district court correctly held that ALPA's longstanding interpretation of its own governing documents is entitled to considerable judicial deference, subject to judicial review only if "patently unreasonable" or adopted in bad faith. *See Dow v. United Bhd. of Carpenters and Joiners,* 1 F.3d 56, 58 (1st Cir. 1993); *Local 1052 United Bhd. of Carpenters & Joiners v. Los Angeles County Dist. Council of Carpenters,* 944 F.2d 610, 613 (9th Cir. 1991); *Air Wisconsin Pilots Protection Comm. v. Sanderson,* 909 F.2d 213, 218 (7th Cir. 1990); *Newell v. International Bhd. of Elec. Workers,* 789 F.2d 1186, 1189 (5th Cir. 1986). Judicial deference is particularly appropriate in this libel case where ALPA's interpretation is consistent with its well-established past practices for sympathy strikes, where most pilots participated in the leadership's called strike, where the pilots subsequently voted overwhelmingly in August 1989 to continue the strike, and where ALPA's constitution provides that the Board's interpretation shall govern in the event of dispute. The district court correctly deferred to ALPA's interpretation of its governing documents. Even if ALPA's interpretation were somehow incorrect, the record contains no evidence that ALPA's thirty-year interpretation is patently unreasonable or that it was adopted in bad faith.[16]

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[15] J. Randolph Babbitt, the current president of ALPA, testified at his deposition:

> It is our practice here for a primary strike to follow the procedures set forth in the Constitution and Bylaws. It is equally our practice, if there is a secondary strike, there is specific language that directs us in the Policy Manual to a different set of procedures and we would follow those.

John Bavis, who had twenty-four years of experience at ALPA and is a former chairman of the Eastern MEC, similarly testified at his deposition:

> If what you are asking me is did we actually do a strike vote of the membership under paragraph B, my answer to you is no. However, the authority and duty to [sic] the MEC is contained in all of this section. And B talks about a primary strike, which could be the pilots' own strike on the property. It is silent here in this particular section you're talking about dealing with the question about a secondary strike. You have to go to the Administrative Manual to find out what the process is to follow. And when you do that, it says in words to the effect that the president in conjunction with the MEC is the decision-making factor to honor another craft's picket line on your property. It takes both of those constituent bodies to agree.
>
> . . .
>
> The literal words say strike vote of the members of airlines may be taken. It refers to a primary strike on the property. Even though the word primary isn't there, that is the intent of the particular paragraph.

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[16] The dissent describes ALPA's interpretation as "simply ridiculous" and "implausible." There are common sense arguments why union members would want a membership vote for all types of strike. However, the question here is not what we think is best or what pilots likely would insist upon before a sympathy strike is called. Instead, the question is what actually happened in this case and whether this Court should defer to ALPA's interpretation of its own constitution under the specific uncontested facts in this record.

In sum, we find that the pilots have not shown that ALPA's sympathy strike was unlawfully called. At a minimum, there is insufficient evidence that ALPA's interpretation of its constitution is patently unreasonable or adopted in bad faith.

### D. No Jury Issue Regarding Actual Malice

Independently of the above reasons, all Defendants are also entitled to summary judgment on the libel claim because the pilots have produced insufficient evidence of "actual malice." Indeed, the evidence establishes that Defendants reasonably believed these pilots were "The Scabs of Eastern of the Strike of '89" because they undisputedly crossed ongoing picket lines during the sympathy strike. At a minimum, the record is devoid of evidence to support a jury finding that the pilots proved by clear and convincing evidence that Defendants knew – or were reckless about whether – they were "The Scabs of Eastern of the Strike of '89." Similarly lacking is any evidence that Defendants knew or were reckless about whether readers would strictly construe the terms "scabs" and "strike" according to technical definitions rather than the common understanding of workers who cross picket lines during a work stoppage.

The inquiry in a case involving actual malice is not whether the defendants acted negligently or imprudently in publishing the challenged statements. *See Masson*, 501 U.S. at 510; *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). Rather, a defamation plaintiff must establish that a defendant acted with a "high degree of awareness of . . . probable falsity" of factual statements or in fact "entertained serious doubts as to the truth of his publication." *Masson,* 501 U.S. at 510 (citations omitted); *St. Amant v. Thompson,* 390 U.S. at 731; *Gertz v. Robert Welch, Inc.,* 418 U.S. 323 (1974); *accord Harte-Hanks Communications v. Connaughton,* 491 U.S. 657, 667 (1989); *Bose Corp. v. Consumers Union,* 466 U.S. 485, 511 n.30 (1984).

This actual-malice standard requires a plaintiff to establish by clear and convincing evidence, *Masson,* 501 U.S. at 510; *Anderson,* 477 U.S. at 254, that "the defendant realized that his statement was false or that he subjectively entertained serious doubt as to [its] truth." *Bose,* 466 U.S. at 511 n.30; *see Holbrook v. Harman Automotive, Inc.,* 58 F.3d 222, 226 (6th Cir. 1995); *Clyburn v. News World Comm. Inc.,* 903 F.2d 29, 33 (D.C.Cir. 1990).[17]

Here, there is no evidence, let alone sufficient evidence to meet the clear and convincing standard, that Defendants subjectively believed the strike was illegally called and therefore it would be inaccurate to describe the pilots as "scabs." First, it is important to note the parties have never suggested that anyone contested the legality of the strike while it was ongoing. Each individual Defendant testified that he considered the pilots who crossed ALPA's picket lines to be "scabs" because they abandoned the ALPA sympathy strike, took the jobs of striking pilots, and sided with Eastern during the strike.

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[17] Ill-will, improper motive or personal animosity plays no role in determining whether a defendant acted with "actual malice." *See Masson,* 501 U.S. at 510 ("Actual malice . . . should not be confused with the concept of malice as an evil intent or a motive arising from spite or ill will."); *Rosenbloom v. Metromedia, Inc.,* 403 U.S. 29, 52 n.18 (1971) (same).

These ALPA officials also testified, without contradiction, that they in fact believed that the Eastern MEC and ALPA's President properly authorized the pilot sympathy strike pursuant to ALPA's Strike Policy. Given ALPA's thirty-year-old written policy and consistent practice of initiating sympathy strikes without a formal membership vote, and given that the majority of the pilots actually struck against Eastern, participated in a massive work stoppage, and later voted in favor of continuing the strike, there is no evidence that the ALPA Defendants entertained serious doubts about whether these pilots were accurately described as "scabs." Therefore, we affirm the district court's summary judgment order on the libel claim because the pilots failed to show both a false statement and actual malice.

### E. Pilots Who Flew for Eastern Only After August 6

The district court also correctly rejected the separate argument made by a group of pilots who crossed the union picket lines only after the union meeting on August 6 (the "post-August 6 crossover pilots").[18] These pilots contended that they could not be described accurately as "scabs" because even if ALPA's leadership legally called the sympathy strike on March 3, 1989, MEC Chairman Bavis instructed them "to return to work" on August 6, 1989.

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[18] Plaintiffs divide themselves into three groups by dates. Plaintiffs in Group III never honored the ALPA picket lines and worked throughout the strike. Plaintiffs in Group II crossed ALPA's picket lines between March 4, 1989, and August 6, 1989. Groups II and III allege only that they were defamed by being placed on the "scabs" list because no membership strike vote was taken, rendering ALPA's sympathy strike invalid and illegal.

In contrast, Plaintiffs in Group I crossed ALPA's picket lines only after the Miami-based pilots' meeting on August 6, 1989.

The audiotape of the August 6 meeting shows that Bavis prefaced certain remarks by stating that he was "[s]peaking just as Jack Bavis, the pilot," not as "your elected representative[ ]," and that Bavis and every other speaker at the August 6 meeting emphasized that the Eastern pilot group had to maintain its unity and abide by the decision of the majority. Such personal opinions in the course of a debate do not remotely constitute official "instructions" to break ranks and cross picket lines to return to work on an individual basis. As the audiotape of the August 6 meeting also shows, Bavis made plain that "I'm not going to go back to work personally, unless we all go back to work in the cockpit. . . . I'm not gonna go back to work and cross the picket line." "[R]egardless of what the outcome is in terms of the decisions we make as a group," Bavis explained, "we've made them as a group coming out, we make them as a group going back."

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The Group I Plaintiffs allege that they did not cross IAM's picket lines until told to return to work on August 6 by officers of Defendant ALPA and the Chairman of the Eastern MEC. Thus, even if the sympathy strike was validly called initially, the Group I Plaintiffs make the additional argument that the union leadership acted with actual malice toward them by calling them "scabs" after telling them to return to work on August 6, 1989.

Despite the existence of this audiotape, a jury issue still exists about what Bavis actually said at the August 6 meeting because the audiotape was not an official recording of the meeting and seventeen pilots filed affidavits stating that Bavis urged pilots to return to work at the August 6 meeting.[19]

However, even though a jury issue exists about what Bavis actually said on August 6, there is no question of fact about what actually happened after that August 6 pilot meeting. It is undisputed that from then until November 22, 1989, the work stoppage continued, Eastern pilots in uniform continued to walk picket lines, the sympathy strike continued, and the pilots continued to cross picket lines and to work. Indeed, it is not disputed that throughout the rest of August 1989, ALPA, the Eastern MEC, and the Eastern MEC's strike operations committee repeatedly instructed all pilots to remain on strike. Between August 6 and August 9, the Eastern MEC and the overwhelming majority of the pilot group also voted to continue the strike. ALPA and the Eastern MEC notified every Eastern pilot of this decision. ALPA President Duffy notified all ALPA pilots by letter of the MEC's decision. As Duffy explained:

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[19] The dissent points to an ALPA newsletter and charges preferred against Bavis as evidence of what was said at the August 6 meeting. However, the newsletter and the charges were not contemporaneous with any confusion about the strike that may have occurred in the meeting on August 6, 1989. Instead, the newsletter was published in 1992, and the charges were in December 1989 – both well after the official conclusion of the strike on November 22, 1989.

> Over the past week . . . the Eastern pilots have reviewed their options and have voted overwhelmingly not to return to work without a structured settlement of the sympathy strike.

On August 12, 1989, the strike operations committee likewise confirmed that "THE STRIKE IS ON!! THE PICKET LINE REMAINS!!" The record contains evidence of how the pilots' overwhelming vote to remain on strike was widely reported in the media and in internal ALPA communications.

Accordingly, by August 12, 1989, both the Eastern MEC and the overwhelming majority of Eastern pilots had voted to continue the pilots' sympathy strike. Both the Eastern MEC and ALPA notified all Eastern pilots that ALPA and the MEC had considered and rejected the option of terminating the strike. From August 12, 1989, until the end of the sympathy strike in November 1989, the Eastern MEC continued to direct all pilots to maintain the picket lines, and, more importantly, Eastern pilots continued to walk the picket lines in their Eastern uniforms.

As outlined above, the test is not what these post-August 6 crossover pilots thought but what Defendants subjectively knew. The test is not whether these pilots thought they were instructed to return to work and whether they thought the strike was over, but whether Defendants included the post-August 6 crossover Plaintiffs on the "scabs" list knowing the strike had ended on August 6. These pilots cannot show the Defendants knew the strike had been terminated because it is undisputed that after August 6, the work stoppage continued and Eastern pilots picketed until November 22, 1989. More importantly, even if these pilots took Bavis's remarks to be official instructions from ALPA to return to work, their subjective impression that they had ALPA's consent to cross pilot picket lines does not establish actual malice. It is Defendants' subjective view, not the pilots', that determines whether the "scabs" list issued with actual malice.

We also disagree that actual malice is shown because ALPA knew that many pilots returned to work after August 6 and that ALPA's failure to consider the practical effect of Bavis's statements on these pilots may constitute reckless disregard of the truth. Bavis's statements did not occur in a vacuum but as part of a series of ongoing events. Shortly after the August 6 meeting, the vast majority of pilots voted to continue the strike, and on August 12, the union unequivocally announced, "THE STRIKE IS ON!!" Thus, any practical effect of Bavis's statements lasted only until August 12. These particular pilots continued to work after August 12 through the end of the strike in November, and no reasonable jury could find the strike still appeared to be over after August 12 – much less that Defendants were reckless about such appearance.

Thus, the post-August 6 crossover pilots have failed to present any evidence from which a reasonable juror could conclude that the ALPA Defendants believed it was false to refer to them as "scabs." At a minimum, there is insufficient evidence to establish actual malice by clear and convincing evidence.

## V. APPELLANT NORMAN

Appellant Joseph S. Norman, II, advances pro se an additional argument that ALPA acted with malice as to him.[20] According to Norman, he crossed the picket lines to participate in Eastern's pilot training program, not to work as a pilot. Consequently, Norman argues that he never "worked" in violation of the strike and thus was not a scab. He cites a case holding that trainee pilots are not "permanent employees" for purposes of the Railway Labor Act. *See Eastern Air Lines, Inc. v. Air Line Pilots Ass'n Int'l,* 920 F.2d 722, 727 (11th Cir. 1990).

Norman's contentions lack merit. The record shows that Norman was hired by Eastern as a DC-9 Captain and received compensation while in training. One of his job requirements was to participate in the pilot training program. Under these circumstances, Norman was "working" for Eastern in the ordinary sense of the term. It is this colloquial use of "working" – and not Norman's legal classification under the Railway Labor Act – that is relevant in determining whether "scab" can be applied to him. Consequently, ALPA had no additional reason to know that Norman was not a scab; his situation is therefore no different from that of all the other pilots[21] who worked despite the strike.[22]

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[20] Norman also contends that he was not served with ALPA's motion for summary judgment at least ten days before the hearing thereon, as required by Fed.R.Civ.P. 56(c). *See United States v. One Colt Python .357 Cal. Revolver,* 845 F.2d 287, 289 (11th Cir. 1988). The record, however, establishes that the required notice was served upon Norman's counsel nine months prior to the hearing. The fact that Norman subsequently began proceeding pro se – after service upon his counsel but prior to the district court's ruling on the motion – does not invalidate the notice served while he was represented by counsel and thus does not necessitate a second service.

## VI. CONCLUSION

For these reasons, we affirm the district court's grant of summary judgment in favor of all Defendants on all Plaintiffs' libel claims and affirm the dismissal of Plaintiffs' claim for intentional interference with their business relationships.

**AFFIRMED.**

TJOFLAT, Circuit Judge, concurring in part and dissenting in part:

"Scab" in the labor context is a pejorative term that frequently carries with it the threat of harm. *See* John P. Ludington, Annotation, *Defamation: Designation as Scab,*

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[21] Norman began working for Eastern in May 1989, and thus is not among the pilots who returned to work after August 6, 1989.

[22] In light of this conclusion, we can also conclude that the district court did not abuse its discretion in denying Norman's motion for severance.

65 A.L.R.4th 1000, 1009-10 (1988).[1] William West discovered exactly what kind of harm when he decided not to

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[1] The Oxford English Dictionary (the "OED") contains a compilation of the uses of the word scab in a labor context. The first known use occurred in 1777, "[t]he Conflict would not been [sic] so sharp had not there been so many dirty Scabs; no Doubt but timely Notice will be taken of them." *Oxford English Dictionary* 550 (1989). Other uses of the term scab the OED cites: "[t]he offending member was then termed a scab and wherever he was employed no others of the society were allowed to work;" "[t]he man who takes the place of another when that other engages in a struggle with a corporation is a 'scab';" "[t]he scabs soon found out what it was like to be hated;" "Having thus given the characteristics and conditions of the 'legal,' or honourable trade, I next turn my inquiry to the state of the labouring men, women, and children employed by the shop-masters, who are distinguished from the 'wages' (or legal) shops by the terms *'illegal,' 'scab,'* or *'slaughtershop' keepers;"* "If there is a strike ordered I will be damned if I am going to scab;" and "I won't scab any man's job." *See id.* (citations omitted).

Probably the most famous use of the term scab is from a poem generally attributed to Jack London entitled "Ode to a Scab," which appeared on the cover of the Air Line Pilots Association ("ALPA") publication:

> After God had finished the rattlesnake, the toad, and the vampire, He had some awful substance left with which he made a SCAB. A SCAB is a two-legged animal with a corkscrew soul, a water-logged brain, and a combination backbone made of jelly and glue. Where others have hearts, he carries a tumor of rotten principles.
>
> When a SCAB comes down the street, men turn their backs and angels weep in heaven, and the devil shuts the gates of hell to keep him out. No man has a right to SCAB as long as there is a pool of water deep enough to drown his body in, or a rope long enough to hang his carcass with. Judas Iscariot was a

join his fellow Teamsters in striking United Parcel Service ("UPS") during the summer of 1997. Mr. West's daughter, Callie, was five years old at the time and suffered from epilepsy and kidney problems. She had already undergone twelve operations. Because West did not strike, the Teamsters, who controlled his medical insurance, cut off Callie's medical coverage. *See Union Casualties*, Wall St. J., Sept. 2, 1997, at A18.

Rod Carter, a Miami-based UPS driver and Teamster, also discovered what it meant to be labeled a scab during the 1997 strike. While stopped at a traffic light, Carter was pulled from his delivery truck by six men, beaten, repeatedly called "nigger," and stabbed five times with an ice pick. *See Hearing on S.230: The Freedom from Union Violence Act Before the Senate Judiciary Comm.*, 105th Cong., at 100-01 (1997) (testimony of Rod Carter). Retaliation against scabs that summer even extended into sympathetic unions. In Houston, the president of the Police Patrolmen's Union, Terry Martin, told his members to "go into a 'zero tolerance' mode, and do everything possible

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gentleman compared with a SCAB. For betraying his Master, he had character enough to hang himself. A SCAB HASN'T!

Esau sold his birthright for a mess of pottage. Judas Iscariot sold his Savior for thirty pieces of silver. Benedict Arnold sold his country for a promise of a commission in the British Army. The modern strike-breaker sells his birthright, his country, his wife, his children, and his fellow-men for an unfulfilled promise from his employer, trust or corporation.

to get that UPS 'scab' truck off the road." Stephen Johnson, *Police Union Urges Members to Pull Over "Scab" UPS Drivers*, Hous. Chron., Aug. 7, 1997, at 1.

Lest one think the Teamsters are the only union that harms scabs, here are two other examples. During a United Auto Workers strike in Winchester, Virginia, striking workers vandalized the property of a woman they targeted as a scab, fired a gun through her car window, and left a bloody cow's head on the hood of her car. *See Hearing on S.230: The Freedom from Union Violence Act Before the Senate Judiciary Comm.*, 105th Cong., at 4 (1997) (testimony of Reed Larson). Finally, in the midst of a United Mine Workers strike, striking miners shot and killed Eddie York for continuing to work even though the company he worked for was not the target of the United Mine Workers strike. *See id.*

As these examples illustrate, in the labor context, scab is a factual allegation with a specific definition and consequences. *See Old Dominion Branch No. 496, Nat'l Ass'n of Letter Carriers, AFL-CIO v. Austin*, 418 U.S. 264, 284, 94 S.Ct. 2770, 2781, 41 L.Ed.2d 745 (1974) [hereinafter *Letter Carriers*] (stating that "the only factual statement in the disputed publication is the claim that appellees were scabs"). If this allegation is false and made with actual malice, like any other factual assertion, it is defamatory. *Cf. id.* at 283, 94 S.Ct. at 2780 (finding that "[r]ather than being a reckless or knowing falsehood, naming the appellees as scabs was literally and factually true"). Because I conclude that (1) the Air Line Pilots Association's ("ALPA") allegation that they were scabs was false and (2) a jury could find for either party on the issue of actual malice, I would hold that the district court erred in granting appellees summary judgment on appellants' libel claim.[2] I, therefore, respectfully dissent.[3]]

## I.

The Air Line Pilots Association ("ALPA") is a labor union that represents airline pilots from a number of commercial airlines. Within each airline, ALPA operates through a Master Executive Council ("MEC"), a board of elected pilot representatives that makes union policy decisions relating to that airline.

On March 4, 1989, the MEC at Eastern Airlines decided that Eastern's pilots should conduct a "sympathy strike" in conjunction with a strike against Eastern by the International Association of Machinists ("IAM").[4] Accordingly, the pilots were directed to stop working, and not to return to work until such time as an agreement was reached between IAM and Eastern. The sympathy strike lasted until November 22, 1989, when the Eastern MEC voted to end the strike (despite the fact that the

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[2] I agree with the majority, however, that the libel claim of appellant Joseph S. Norman, II is insufficient as a matter of law. Hence, in referring to appellants I exclude Norman.

[3] I concur in the majority's affirmance of the district court's dismissal of appellants' claim, under Fed.R.Civ.P. 12(b)(6), that ALPA tortiously interfered with appellants' business relationships with other airlines.

[4] A "sympathy strike" occurs when members of a union stop working to show support for another union that has a grievance with management. *See NLRB v. Peter Cailler Kohler Swiss Chocolates Co., Inc.*, 130 F.2d 503, 505-06 (2d Cir. 1942).

IAM strike had not ended) and directed the pilots to return to work.

After the conclusion of the sympathy strike, ALPA produced and distributed a publication titled "The Scabs of Eastern of the Strike of '89," which listed the more than two thousand pilots who allegedly refused to honor the strike and crossed the machinist union's picket lines to fly for Eastern. The appellants in this case are pilots who were on this list. They brought suit against ALPA,[5] alleging, *inter alia,* that the publication of the list constituted libel. The district court disposed of the libel claim on summary judgment, concluding that the pilots had not shown that the "scab" allegation was false, as required by law.

## II.

The majority, purporting to follow the Supreme Court's reasoning in *Letter Carriers,* concludes that ALPA's statement that appellants were scabs was factually true; and thus, the district court did not err in granting appellees summary judgment. The majority, however, follows the Court's reasoning in *Letter Carriers* in form rather than substance. As in *Letter Carriers,* this case involves a union calling people who oppose it scabs. Unlike *Letter Carriers,* however, the pilots that crossed the picket lines were not scabs.[6] For ALPA's statement (that appellants were scabs) to be true, two conditions had to be met: (1) appellants worked for Eastern and (2) they did so while ALPA was on strike. It is undisputed that appellants flew for Eastern. Because ALPA was never legally on strike, however, appellants did not work during a union strike. Thus, the statement that they worked during a union strike, therefore were scabs, was false.

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[5] The appellants also sued certain individual executives in ALPA and in the Eastern MEC. I refer to all of the defendants/appellees as "ALPA."

### A.

To succeed on a defamation claim based on statements made during a labor dispute, a plaintiff must show falsity and actual malice. A statement is false if it produces a different effect on the mind of the reasonable reader than would the truth. *See Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 517, 111 S.Ct. 2419, 2432-33,

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[6] According to Webster's, a "scab" is "(1): one who refuses to join a union (2): a member of a union who refuses to strike or returns to work before a strike has ended (3): a worker who accepts employment or replaces a union worker during a strike (4): one who works for lower wages than or under conditions contrary to those prescribed by a union." *See Webster's Third New International Dictionary* 2022 (1993); *see also ante* at 12 n. 7.

The Court in *Letter Carriers* found the scab designation true because the appellants refused to join the National Association of Letter Carriers, and refusing to join a union is one definition of scab. *See Letter Carriers*, 418 U.S. at 283, 94 S.Ct. at 2780. In this case, the only possible definition of scab ALPA could have intended to apply to appellants was that they worked during a union strike. As discussed below, appellants did not violate a legal union strike, therefore, the allegation that they were scabs is false.

115 L.Ed.2d 447 (1991). "Minor inaccuracies" do not make a statement false. *Id.*, 111 S.Ct. at 2433. The statement in question here is that appellants were "scabs." To determine if this statement was false, we thus look at whether a "reasonable reader"[7] would have thought that ALPA, by calling appellants scabs, meant that they were people who worked during a union strike; or only meant to engage in rhetorical hyperbole, suggesting in a general sense that appellants were bad people. I agree with the majority's answer to this question – ALPA meant literally that appellants were people who worked during a union strike.

I cannot, however, agree with the majority's conclusion that ALPA's scab allegation was true. The reasonable reader analysis dictated by *Masson* ends with the statement that appellants were scabs; it does not extend to determining whether ALPA was on strike. Yes, appellants can only be scabs if ALPA was on strike. But, we do not inquire whether ALPA was on strike based on the reasonable reader's perception. Rather, we determine whether a union was on strike by looking to the rules that the union established for itself in its constitution and by-laws.[8] If these rules were not followed, the union was not on strike. The majority at various times calls this approach "highly, formalistic, legal analysis" and "technical [and] legalistic." *See ante* at 13-14. I agree. But the fact of the matter is that ALPA's Constitution and By-laws set forth the requirements ALPA had to follow in order to call its sympathy strike. ALPA did not follow its own rules; therefore, ALPA was not legally on strike, and its allegation that appellants were scabs, i.e., people who worked during a union strike, was false.

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[7] Reasonable reader is a standard in defamation cases, such as a reasonable person is a standard in negligence cases. I do not, therefore, quote the term in the remainder of this opinion.

[8] The majority today turns labor law on its head by finding that courts, when determining if a strike occurred, are not to look at whether a union followed the rules and procedures contained in its constitution and by-laws. Rather, courts are to look at whether a reasonable reader would perceive that the union was on strike. In other words, union

### 1.

Article I of the ALPA Constitution and By-Laws states: "[w]hen a suspension or withdrawal of service is called for . . . , the members will be balloted before such action may be taken." The procedures for calling a strike are spelled out in more detail in Article IV, which states:

> The approval by a majority vote of the Master Executive Council of an airline, with the advice of the President [of ALPA], is mandatory before a strike vote of the members of an airline may be taken. This membership strike vote shall be

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leaders can call strikes on their own initiative regardless of their constitution's requirement of majority vote, and the strike will be "true" as long as people perceive it as such. Disregarding the fact that such an oligarchical practice contradicts the primary purpose of unions – democratizing the workplace – the majority, with a straight face, declares that courts are not to consider the "strictly legalistic or literal interpretation" of the word strike. *See ante* at 1193. Why a United States Court of Appeals should not be legalistic is unclear to me. Should a forest have no trees?

> by secret ballot. . . . A simple majority of valid ballots returned shall govern.

Reading these provisions together, it appears indisputable that the ALPA Constitution and By-Laws requires a vote of the membership before a strike may be called.

ALPA, however, provides us with two alternative readings of these provisions. The first is that they are discretionary – in other words, they detail the procedures to be followed if a strike vote is taken, but do not mandate that such a vote be taken before a strike is called. While this approach may be plausible as to the Article IV provision, it is entirely incompatible with Article I, which states that "members *will* be balloted" (emphasis added) before a strike is called. Second, ALPA suggests, and the majority agrees, that the voting provisions in the Constitution and By-Laws apply only to primary strikes, and not to sympathy strikes. This interpretation is simply ridiculous. As an initial matter, this interpretation strains the English language; under ordinary rules of grammar, where a noun is left unqualified, it applies without qualification. For example, if a person says that "the cars in the fire lane are illegally parked," we can safely assume that he is referring to all of the cars in the fire lane. It would be nonsense for him later to claim that he was referring only to the blue cars, and not the green ones. Nothing in the text or context of the statement suggests that "cars" applies only to cars of a certain color. Likewise, there is nothing in the text of the Constitution and By-Laws that distinguishes among types of strikes – understandably so, given that a strike has the same impact on labor and management regardless of the reason why it is called – and it is therefore unreasonable for

ALPA now to claim that the strike provisions in its Constitution and By-Laws refer only to primary strikes. Furthermore, if a union were to distinguish between the two types of strikes, it would be far more logical to require a membership vote for a sympathy strike than for a primary strike: whereas workers may benefit directly from a primary strike (through a renegotiated contract), the only benefits they could gain through a sympathy strike would be indirect and speculative. Therefore, even if substantial deference is afforded ALPA's interpretation of its own governing documents, *see Dow v. United Bhd. of Carpenters and Joinders of Am.*, 1 F.3d 56, 58 (1st Cir. 1993), a membership vote was required before a strike could commence.[9] Because no such vote was taken,[10] the strike was invalid.

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[9] The majority points out that, for over thirty years, ALPA has interpreted its Constitution and By-Laws as not requiring a membership vote for a sympathy strike. This tells us merely that ALPA's interpretation has been consistent, not that it is reasonable. Equally irrelevant to the question of the legality of the strike is the fact that ALPA's interpretation is included in ALPA's Administrative Manual; the ALPA Board of Directors (the author of the manual) has the power to *interpret* and *apply* the ALPA Constitution, but not to *ignore* it. Otherwise, the Constitution and By-Laws would be no more than default provisions, subject to revision at the whim of the Board of Directors.

[10] ALPA members were polled two weeks prior to the strike declaration to see whether they would honor an IAM picket line. This was clearly an attempt by ALPA to gauge the feelings of its members; it was not – as ALPA properly concedes – the equivalent of a membership vote on whether ALPA should strike. The significance of this poll is discussed at greater length in part II.B.1, *infra*.

## 2.

Appellees argue that the strike was legal even though not properly authorized because the pilots of Eastern did in fact engage in a strike in which the appellants did not participate. This argument, however, fails adequately to account for the context in which the "scab" allegation is being made. It is true that in the context of an ordinary wildcat strike (in which a group of workers decides on its own to stop work), the charge of "scab" made by a striking worker to another worker who does not join the strike may well be accurate despite the lack of official union authorization. This case, however, presents a very different situation. In this case, we must assume that ALPA intended, through the publication of the scab list, to convey that its strike was legal. A contrary assumption would mean that ALPA published a list of all the pilots who worked during a strike it illegally ordered. Although it is theoretically possible that ALPA wanted to convey such a message, it is highly unlikely, for such a message would only harm the union.

Further, the scab list was distributed to pilots at other airlines and was – by ALPA's own admission – intended to make it difficult for the named pilots to obtain employment with other airlines. If the strike was illegally called, pilots' inclusion on the scab list would provide no basis for denying them employment. On the contrary, a pilot's refusal to participate in an illegal strike, called by union bosses acting outside the scope of their authority, would make the pilot a more attractive candidate for employment. Inclusion on the scab list would in no way demean the character of the persons so included, but would instead be a badge of honor.

Thus, in the context of this case, the scab allegation makes sense only if the strike was legally called, because only then would inclusion on the scab list carry a negative connotation. It was therefore a necessary assumption of the persons reading the scab list that the strike was legally called. This assumption was buttressed by the fact that the scabbing charge was being made by the union, in a publication distributed by the union pursuant to a formal union resolution.[11] Under those circumstances, a reasonable reader undoubtedly would assume that the persons on the scab list had refused to participate in a valid, union-authorized strike. This assumption, however, was false. As demonstrated in the preceding section, the strike was not called in accordance with the union's Constitution and By-laws, and was therefore invalid. Consequently, the scab allegation was false, and the appellants have established the falsity element of their libel claim.

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[11] On March 29, 1989 – about four weeks after the beginning of the strike – the Eastern MEC unanimously resolved "to publish a finalized list of strike-breaking pilots at the conclusion of the ALPA sympathy strike" and "to bring Article VIII charges against all strike-breakers in accordance with [the] ALPA Constitution and By-Laws." Article VIII of the ALPA Constitution and By-Laws outlines the procedures for disciplinary actions by the union against its members and the grounds on which such actions may be brought. Under Article VIII, any member may be disciplined, fined, or expelled for working during an ALPA strike. ALPA's Administrative Manual further explains that any ALPA member who "participates in strikebreaking by actually flying the airplanes of an airline on a *legal* ALPA-sanctioned strike shall be automatically expelled from membership in ALPA." *ALPA Administrative Manual* § 65-12, at 271 (1993) (emphasis added).

## B.

In addition to showing that the scab allegation was false, the appellants, to succeed on their libel claim, also must show that the allegation was made with actual malice – in other words, that the allegation was made knowing that it was false, or with reckless disregard as to its accuracy. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80, 84 S.Ct. 710, 726, 11 L.Ed.2d 686 (1964); *Letter Carriers*, 418 U.S. at 281-82, 94 S.Ct. at 2779-80 (extending the *New York Times* framework to statements made during labor disputes). "Reckless disregard," in this context, means that the defendant made the allegation despite "entertain[ing] serious doubts as to the truth" thereof. *St. Amant v. Thompson*, 390 U.S. 727, 730-31, 88 S.Ct. 1323, 1325, 20 L.Ed.2d 262 (1968). In this case, there are two different theories – one argued by all appellants and one only argued by the Group I appellants – concerning how ALPA acted with actual malice. Each theory is discussed in this section.

### 1.

The appellants' first theory is that ALPA acted with malice because it knew that the strike was illegally called, or at least had substantial doubts regarding the legality of the strike, when it published the scab list. ALPA, in response, maintains that it genuinely and without a doubt believed that no membership vote was needed for a sympathy strike, and thus believed that the individuals on the scab list were in fact scabs.[12] In support of its position, ALPA points to its long-standing administrative policy of not taking a membership vote prior to calling a sympathy strike, and to the testimony of ALPA officials that they believed the strike was properly authorized.[13]

The appellants, meanwhile, contend that under the circumstances it is highly improbable that ALPA actually believed – at least without serious doubts – that it had the power to call a strike without taking a vote of the membership. *See generally Hunt v. Marchetti,* 824 F.2d 916, 919 (11th Cir. 1987) (noting that malice may be inferred from circumstantial and indirect evidence). Four arguments support their contention.

First, the appellants point out that the requirement of a membership vote is patently evident from ALPA's own Constitution and By-Laws. Assuming, therefore, that the ALPA leadership read its own Constitution, it must have known that a vote was required. This seems a fair assumption considering the substantial legal significance given to voting rights contained in a union's Constitution and By-laws. Federal law provides a cause of action against a union for denying a member the right to vote, if the right to vote is contained in the union's Constitution and By-laws. *See* 29 U.S.C. § 411(a)(1) (1994); *Christopher v. Safeway Stores, Inc.*, 644 F.2d 467, 470 (5th Cir. Unit A May 1981). ALPA is no stranger to this cause of action; it has been sued on the basis of federal voting rights requirements on numerous occasions, both before and after the events giving rise to this lawsuit. *See, e.g., Michelotti v. Air Line Pilots Ass'n,* 61 F.3d 13, 14 (7th Cir. 1995); *O'Neill v. Air Line Pilots Ass'n, Int'l,* 886 F.2d 1438, 1447-48 (5th Cir. 1989), *rev'd on other grounds,* 499 U.S. 65, 111 S.Ct. 1127, 113 L.Ed.2d 51 (1991); *Klemens v. Air Line Pilots Ass'n, Int'l,* 736 F.2d 491, 495 (9th Cir. 1984). Further, state law generally provides for a breach of contract action when a union violates the terms of its Constitution and By-laws. *See International Ass'n of Machinists v. Gonzales,* 356 U.S. 617, 618-19, 78 S.Ct. 923, 924, 2 L.Ed.2d 1018 (1958). Finally, and more generally, federal law imposes a "duty of fair representation" on unions that requires them always to act in their members' best interests, *see Air Line Pilots Ass'n, Int'l v. O'Neill,* 499 U.S. 65, 74-76, 111 S.Ct. 1127, 1133-34, 113 L.Ed.2d 51 (1991); such a duty suggests that unions are expected to be aware of their constitutional obligations to their members. These obligations include, I submit, the duty not to defame as "scabs" members who refused to participate in an illegal strike. In light of this body of law – and ALPA's known familiarity with it – it would be difficult for ALPA to claim that it was unfamiliar with the voting requirements contained in its own Constitution and By-Laws, or that it honestly thought it could ignore the requirements of the

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[12] When I speak of what ALPA "believed," I am referring to the beliefs of the ALPA officials responsible for the publication of the scab list. *See New York Times Co.,* 376 U.S. at 287, 84 S.Ct. at 730.

[13] The majority apparently finds this evidence to be credible, and therefore concludes that ALPA did not act with malice. There is, however, substantial evidence (discussed later in this subsection) that ALPA, despite its assertions to the contrary, knew that the strike was invalidly called. The weighing of conflicting evidence is a matter within the province of the jury, not this court.

Constitution and By-Laws on the basis of its internal administrative policies.

Second, the idea that the union leadership would not be required to poll the membership before calling a strike is so implausible that it seems unlikely that ALPA actually believed it. *See Hunt v. Liberty Lobby,* 720 F.2d 631, 643-46 (11th Cir. 1983) (stating that implausibility may be evidence of actual malice). It is hard to imagine an organizing campaign in which the union leaders say to the workers, "come join our union, and we'll decide whether you should work or strike, without asking you." Such an approach would deprive workers of any direct input into the most important decision that a union makes. Furthermore, such a system would contain an enormous potential for corruption: management could avert a strike simply by bribing a few individuals, without having to respond to the demands of the union membership as a whole. (Conversely, those same individuals could threaten a strike – regardless of the sentiment of the membership as a whole – in order to obtain a bribe from management.)[14]

Third, an opinion poll taken by ALPA two weeks prior to calling the strike suggests that ALPA had serious doubts regarding its power to call a strike unilaterally. The poll consisted of questionnaires sent to all Eastern

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[14] The idea of concentrating so much power in the hands of a few individuals recalls Lord Acton's oft quoted phrase, "[p]ower tends to corrupt and absolute power corrupts absolutely." John Bartlett, *Familiar Quotations* 615 (15th ed. 1980).

ALPA members asking them to choose among the following options: (1) "I would honor an IAM picket line at EAL"; (2) "I would not honor an IAM picket line at EAL"; or (3) "My elected MEC representatives are best qualified to make this decision, if and when an IAM strike occurs, and I will abide by their decision." The inclusion of the third option is telling: if ALPA officials were confident of their constitutional power to call a strike without taking a membership vote, they would, at most, ask ALPA members to choose between the first two options in order to gauge the feelings of the membership prior to making their decision. The availability of the third option could lead a reasonable jury to conclude that ALPA knew (or at least suspected) that it could not call a strike on its own, and that the purpose of the poll was to encourage the members to abdicate their voting rights.

Finally, ALPA's lack of investigation may suggest actual malice. When there is no pressing need for immediate publication of a defamatory allegation, actual malice may be inferred if the investigation given to the allegation is grossly inadequate under the circumstances. *See Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 692-93, 109 S.Ct. 2678, 2698-99, 105 L.Ed.2d 562 (1989); *Vandenburg v. Newsweek, Inc.*, 441 F.2d 378, 380 (5th Cir. 1971).[15] In this case, the allegation is very serious – ALPA officials believed (and hoped) that by labeling the appellants "scabs," they would permanently prevent them from obtaining employment with a commercial airline. *See infra* note 25. Under those circumstances, and given the union's duty of fair representation, the union must conduct a substantial investigation before it decides whether to distribute a scab list. Although ALPA thoroughly researched whether the listed individuals actually crossed the IAM picket lines, there is no evidence that it investigated the more foundational question of whether its Constitution and By-laws required a membership vote prior to calling a sympathy strike. For instance, there is no evidence that ALPA consulted counsel for a legal opinion regarding its authority to call a sympathy strike without a vote of the membership.[16] In the absence of such evidence, a jury reasonably could infer that ALPA made the scab allegation with serious doubts as to its accuracy.

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[15] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), this court adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

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[16] Had ALPA so inquired, its attorney may well have concluded that any reading of the agreement that allowed union officials to call a strike without a membership vote would be void as against public policy, because such an interpretation would create an environment in which corruption would be likely to occur. Indeed, it was in response to such concerns that Congress passed the Labor-Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. §§ 401-531 (1994) – which, as discussed above, protects the rights of union members to vote on union business when such a right is contained in the union's Constitution and By-laws. The LMRDA reflects a federal policy favoring democratic conduct of union activity, out of a recognition that the tremendous power given to labor unions under federal law must be accompanied by democratic safeguards to prevent corruption. *See NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180-81, 87 S.Ct. 2001, 2006-07, 18 L.Ed.2d 1123 (1967). In the words of Archibald Cox, a key participant in the drafting of the LMRDA, "[a]n individual worker gains no human rights by substituting an autocratic union officialdom for the tyranny of the boss." Archibald Cox, *The Role of Law in Preserving Union Democracy*, 72 Harv. L.Rev. 609, 610 (1959).

In sum, under this theory, a reasonable jury could find for either side on the issue of malice. The district court therefore erred in granting summary judgment and substituting its judgment for that of a jury.

### 2.

Even if the scab allegation was not made with malice as to all of the pilots (because ALPA actually and non-recklessly believed that the strike had been called in accordance with the ALPA Constitution and By-Laws), it may nevertheless have been made with malice as to a subset of the pilots. On August 6, 1989 – five months after the beginning of the strike – the Eastern MEC called a meeting of all Eastern ALPA members to discuss the union's course of action.[17] At the meeting, the chairman of the Eastern MEC, Captain Jack Bavis, said that the striking pilots should return to work. Within the next few days, several of the appellants – known as the "Group I" pilots – returned to work for Eastern.[18] Union officials other than Bavis subsequently announced that the strike was still ongoing, and ALPA did not formally conclude the strike until November 22. The Group I pilots were therefore included on the scab list.

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[17] The meeting was held in Miami and was broadcast to all other Eastern pilot bases.

[18] The remainder of the appellants either never joined the strike or ceased striking prior to August 6.

This sequence of events raises the possibility that the strike was officially concluded on August 6, 1989. If so, and if ALPA knew this when publishing the scab list, then ALPA acted with actual malice as to the Group I pilots – even if it believed that the strike had been legitimately called in the first instance. In this section, therefore, I discuss (a) whether the strike was in fact terminated on August 6, and, if so, (b) whether ALPA knew this to be the case (or acted with reckless disregard of the truth) when it accused the Group I pilots of being scabs.

### a.

ALPA argues that the strike could not have been concluded by Bavis' August 6 remarks because Bavis did not have the authority to end the strike unilaterally; that decision had to be made by the president of ALPA and a vote of the entire MEC. ALPA may well be correct in this assertion;[19] however, Bavis' lack of actual authority to end the strike is irrelevant in light of his apparent authority to do so. *See North River Energy Corp. v. United Mine Workers of Am.*, 664 F.2d 1184, 1192 (11th Cir. 1981) (noting that acts of a union agent on behalf of the union committed within the scope of the agent's apparent authority "bind the union, regardless of whether they were specifically authorized or ratified"). Apparent authority is "the authority a principal knowingly tolerates or allows an agent to assume, or which the principal by his actions or words holds the agent out as possessing." *Owen Indus., Inc. v. Taylor,* 354 So.2d 1259, 1261 (Fla. 2d DCA 1978). Bavis, as chairman of the Eastern MEC, undisputedly was an agent of ALPA. ALPA held Bavis out as possessing the authority to terminate the strike by placing the following sentence on the front page of the ALPA Pilots' Strike Manual: *"PLEASE KEEP IN MIND: A STRIKE ACTION WILL NOT BE CALLED OFF OR TERMINATED EXCEPT BY DIRECTION OF THE MEC CHAIRMAN."* Consequently, Bavis had the apparent authority to end the strike.

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[19] Although the ALPA Constitution and By-Laws is clear regarding how a strike is to be initiated, *see supra* part II.A.1, they appear to be silent on the topic of how a strike is to be concluded.

Given that Bavis had the apparent authority to end the strike, the next question is whether he exercised that authority. Bavis' exact words are unknown,[20] but the parties agree that he said that the striking pilots should return to work. ALPA maintains that Bavis was expressing his individual views in the context of a debate regarding the future of the strike. In support of its position, ALPA points to the fact that the meeting culminated in a vote in which the majority of the pilots voted to continue striking. ALPA also points to other statements made by Bavis during the meeting, such as his statement that he was "speaking just as Jack Bavis, the pilot" and his statement that "I'm not going to go back to work personally unless we all go back to work," as well as his affidavit that he never told the pilots to cross picket lines prior to November 22. Finally, ALPA points to certain communiques issued subsequent to August 6 – such as an August 11 letter to all Eastern pilots – in which it maintained that the strike was still ongoing.

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[20] No official recording of the pilots' meeting was made. Various pilots made unofficial recordings (some of which are in the record), but these recordings are incomplete or unintellible in key places.

The appellants, on the other hand, maintain that Bavis was announcing that the strike was over. In support of their position, they point to seventeen affidavits in which various Group I pilots state that ALPA terminated the strike on August 6, basing their conclusion on Bavis' statements. They also point to disciplinary charges brought against Bavis by ALPA that "Capt. Bavis did, on August 6, 1989, publicly advise the Eastern pilots to abandon their picket activities and to return to work at Eastern, accomplishing this traitorous act during a . . . meeting to which the striking Eastern pilots were listening via a system-wide audio transmission" – charges that are highly inconsistent with ALPA's present position that Bavis was merely exercising his First Amendment right to express his personal opinion in an open debate. In addition, they point to a statement in ALPA's official newsletter that "[i]n August 1989, ALPA National advised the Eastern pilots to go back to work."[21] Finally, the surrounding circumstances support the appellants' argument: given Bavis' apparent authority to end the strike, the desire of many pilots to return to work, and the severe consequences to the pilots of returning to work in violation of the strike, *see supra* note 11, other ALPA leaders at the meeting seemingly would have taken steps to clarify Bavis' remarks if they did not want them to be interpreted as authorization to return to work.

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[21] Contrary to the majority's suggestion, *see ante* at 1199 n. 19, the newsletter and the charges proffered by ALPA are highly probative circumstantial evidence as to what was said on August 6. By way of analogy, if the buyer of widgets gives the seller a check for $5000 following a meeting with the seller, the check is highly probative as to the what the parties said at the meeting regarding the purchase price. (I note that ALPA also submitted after-the-fact evidence to the district court – namely, the communiques discussed earlier – to support its position regarding what Bavis told the pilots on August 6.)

In sum, there is a genuine issue of material fact as to whether ALPA terminated the Eastern pilots' strike on August 6, 1989. If this issue is resolved against ALPA, then the Group I pilots are entitled to a jury determination on whether the scab allegation was made with actual malice, as I discuss in the next subsection.[22]

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[22] Even if ALPA did not in fact terminate the strike on August 6, there may be another theory on which the Group I pilots can establish malice. In order for a worker to be a scab, he must know that his union is on strike. A worker who works in violation of a strike of which he is unaware is no more a "scab" than a military officer who unwittingly divulges security information is a "traitor" – both may be fools, but neither can be said to have engaged in an act of intentional betrayal. And, as the language quoted in note 1, *supra*, suggests, an allegation of scabbing necessarily implies betrayal or disloyalty. Thus, if the Group I pilots genuinely believed that their union was no longer on strike, then they could not accurately be described as scabs. Consequently, if ALPA knew that the Group I pilots believed that the strike ended on August 6, then it acted with malice. Because this theory of actual malice was not presented to the district court or to this court on appeal, however, I discuss it no further.

### b.

ALPA acted maliciously in regard to the Group I pilots if it published the scab list knowing that (or with reckless disregard as to whether) Jack Bavis terminated the strike on August 6. In this regard, ALPA has presented testimony and post-August 6 communiques from its own officials stating that it genuinely and non-recklessly believed Bavis did not terminate the strike and that the strike was continuing.[23] On the other hand, the appellants have presented substantial circumstantial evidence of actual malice – namely, that other ALPA officials heard Bavis' statements, and therefore knew that the strike had been terminated when they published the scab list. In addition, the charges brought against Bavis by ALPA are compelling evidence that ALPA knew that he had terminated the strike. Also, because ALPA knew that many of the pilots returned to work in response to Bavis' statements, ALPA's failure to consider the practical effect of those statements prior to calling the pilots "scabs" may have constituted reckless disregard of the truth under the circumstances. In other words, if ALPA induced the Group I pilots to return to work, a jury could reasonably infer that ALPA at least had serious doubts when it then turned around and called those pilots "scabs." Finally, ALPA's lack of investigation into the effect of Bavis' statements suggest malice, as discussed in part II.B.1, *supra*.

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[23] The majority, as with the discussion of malice as to all of the pilots, *see supra* part II.B.1, finds ALPA's evidence to be credible and therefore concludes that ALPA did not act with malice. Again, however, in light of the contrary evidence discussed in the remainder of this paragraph, the weighing of the evidence is a matter for the jury, not the court. *See supra* note 13.

A genuine issue of material fact exists regarding malice as to the Group I pilots. This is an additional reason (along with the theory of malice discussed in part II.B.1, *supra*) why summary judgment was inappropriate.

## C.

Finally, the appellants must establish that injury resulted from ALPA's publication of the scab list. Florida law recognizes certain types of libels as "libel per se," meaning that injury is presumed and the plaintiff need not present evidence on the issue. *See Briggs v. Brown*, 46 So. 325, 330 (Fla. 1908). Under federal law, however, a libel action arising out of a labor dispute requires proof of injury, regardless of state libel law. *See Linn v. United Plant Guard Workers of Am., Local 114*, 383 U.S. 53, 64-65, 86 S.Ct. 657, 664, 15 L.Ed.2d 582 (1966); *Pantex Towing Corp. v. Glidewell*, 763 F.2d 1241, 1248 n. 7 (11th Cir. 1985).[24]

The district court, in its order granting appellees' motion for summary judgment, expressly declined to reach the issue of injury. The court focused primarily on the truth of the scab allegation – and understandably so, since in a case of this magnitude, it is easier to decide the case on grounds (such as truth and malice) that apply to broad groups of plaintiffs, rather than on a ground (such as injury) that may involve an individualized inquiry into the circumstances of each plaintiff.[25] Nevertheless, such an inquiry may be required in light of my earlier conclusions that the scab allegation is false and that there is a genuine issue of material fact as to actual malice. This case, therefore, should properly be remanded for further proceedings on this issue. I take no position on whether there is a genuine issue of material fact regarding injury.

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[24] "Injury," however, may be defined broadly to include injury to reputation, mental suffering, and so forth. *See Linn*, 393 U.S. at 65, 86 S.Ct. at 664.

## III.

In conclusion, the appellants have established, as a matter of law, that the 1989 Eastern Airlines strike was illegally called and therefore ALPA's scab allegation was false. They have presented sufficient evidence to create a jury issue as to whether the allegation was made with actual malice because ALPA knew (or acted with reckless disregard as to whether) the strike was illegal. Even if the jury answered that question in the negative – in other words, if a jury found for ALPA on the issue of malice – the Group I pilots would nevertheless have a claim for libel. A jury could find that (1) Captain Jack Bavis terminated the strike on August 6, 1989, and (2) ALPA published the scab list knowing this, or with reckless disregard as to whether the strike was so terminated. I take no position on the third element of the appellants' claim, injury.

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[25] Of course, certain evidence of injury is probative as to all appellants – for instance, an affidavit submitted by an economist which states that, out of the 2241 scab list pilots, only three found subsequent employment with a major commercial airline, whereas out of the 1146 non-listed pilots, 136 were able to find such employment. In addition, the appellants' allegations of injury are supported by the fact that the whole purpose of publishing a scab list is to cause injury. The possibility of being labeled a "scab" can encourage workers to participate in a strike only if the label harms the workers in some way. *Cf. supra* note 11 (noting that ALPA resolved to publish a list of strike-breaking pilots at the conclusion of the strike, presumably as a means of preventing defections). This is further confirmed in the present case by correspondence between ALPA and union members who were working during the strike, which includes claims like, "[a] scab who doesn't change his mind in time finds it very difficult to find a job with other carriers. It's not just other pilots who don't want to work with scabs. Even managements [sic] recognize that someone who doesn't understand loyalty does not make a reliable employee"; and "[i]f you crossed [the IAM picket lines] for a job, the job isn't going to last, and the next one could be hard to find."

For the foregoing reasons, I respectfully dissent.

**United States Court of Appeals**

For the Eleventh Circuit

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No. 97-5587

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District Court Docket No. 91-2679-CV

LARRY DUNN, TOM
DUCKWORTH, et al.,

Plaintiffs-Counter-defendants-Appellants,

versus

AIR LINE PILOTS ASSOCIATION,
HENRY DUFFY, et al.,

Defendants-Counter-claimants-Appellees.

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Appeals from the United States District Court
for the Southern District of Florida

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Before TJOFLAT, DUBINA and HULL, Circuit Judges.

## JUDGMENT

(Filed Oct. 25, 1999)

These causes came to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and were argued by counsel;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in these causes be and the same is hereby AFFIRMED;

It is further ordered that plaintiffs-counter-defendant-appellants and plaintiffs-appellants pay to defendants-counter-claimants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

TJOFLAT, Circuit Judge, concurred in part and dissented in part and filed an opinion.

Entered: October 25, 1999
For the Court: Thomas K. Kahn, Clerk

By: /s/ Matt Davidson
Deputy Clerk

ISSUED AS MANDATE: JAN 07 2000

## APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

LARRY DUNN, et al.,

Plaintiffs,

v.

AIR LINE PILOTS ASSOCIATION,
HENRY DUFFY, RANDOLPH BABBIT,
C. H. COPELAND, EDWARD BREEN,
LEWIS BALDWIN, and GREGG
PETACHENKO,

Defendants.

CASE NO. 91-2679-
CIV-DAVIS
MAGISTRATE
JUDGE TURNOFF

(Filed July 28, 1997)

## ORDER

BEFORE THE COURT are the Motions for Summary Judgment of (1) Defendants Air Line Pilots Association, Duffy, and Babbitt (filed April 12, 1996) and (2) Defendants Copeland, Breen, Baldwin, and Petachenko (filed April 22, 1996).[1] Plaintiffs, former flight deck operating crew members for Eastern Air Lines ("Eastern"), sue their union – the Air Line Pilots Association ("ALPA") – and various union officials. As a result of strike activity and on-going labor disputes, Plaintiffs allege that (1) Defendants defamed them by publishing and distributing a blacklist designating Plaintiffs as "scabs" (Counts I and II), and (2) Defendant ALPA breached its duty of fair representation (Count III).[2] Defendants moved for summary judgment on all counts. After carefully considering the parties' motions and exhibits, and hearing oral argument, the Court will GRANT Defendants' Motions for Summary Judgment.

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[1] The two summary judgment motions raise nearly identical arguments, and the second motion for summary judgment incorporates the first by reference. This opinion uses the motion of Defendant ALPA, Duffy and Babbitt ("Motion") as a reference point.

## I. FACTUAL BACKGROUND

### A. The Parties

Plaintiffs, former Eastern pilots and ALPA members, divide themselves into three groups, based on when each group crossed a strike picket line. Plaintiffs in Group I crossed the picket line after August 6 and 7, 1989, when ALPA officers allegedly instructed them to do so. Complaint ¶ 20. Plaintiffs in Group II crossed the picket line between March 4, 1989 and August 6, 1989. *Id.* The Group III Plaintiffs did not honor the picket line at any time. *Id.*

Defendant ALPA is a national labor organization that represents pilots at over thirty airlines. Rosen Decl. ¶ 2.

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[2] ALPA has asserted counterclaims against certain Plaintiffs based on their alleged failure to 1) pay strike fines and 2) repay loans extended by the Union during the sympathy strike. ALPA, however, has volunteered to defer the trial of its counterclaims until after this Court determines Plaintiffs' claims for liability. Furthermore, ALPA states that it will not pursue its counterclaims if 1) this court grants summary judgment in its favor and 2) the Eleventh Circuit affirms this decision. ALPA Motion at 5 n.2.

As a unitary labor organization, ALPA has a single Constitution and By-Laws governing all subordinate bodies and members. *Id.* At all relevant times, ALPA National was governed by a Board of Directors, an Executive Board, and an Executive Committee, in descending order of authority. Rosen Decl. ¶ 2. ALPA National acts as an umbrella entity supporting elected Master Executive Councils ("MECs") at each ALPA airline. The MECs are coordinating councils which are responsible for representing the pilots at an airline. Rosen Decl. ¶ 6. Under ALPA's Constitution and By-Laws, unless otherwise specified, each MEC is empowered to make the final decision regarding any problem or concern the members at that airline may have. *Id.* The pilot representatives on each MEC are democratically elected by the ALPA membership assigned to each pilot base; these representatives form an ALPA Local Executive Council ("LEC"). Rosen Decl. ¶ 7. Each MEC is responsible for making ALPA policy for the pilots employed by their airline. *Id.*

Defendant Henry A. Duffy was president of ALPA from January 1, 1983 until December 31, 1990. Duffy Dep. at 4-5. Defendant E. Randolph Babbit served as Executive Administrator during Duffy's term and has served as president of ALPA since January 1, 1991. Babbit Dep. at 4-5. Defendant C. H. Copeland served as Chairman of the Eastern MEC from September 1989 until December 31, 1991. Copeland Dep. at 6. The remaining Defendants – Edward J. Breen, Lewis Baldwin, and Gregg Petachenko – were members of the Eastern MEC's Strike Committee during the ALPA sympathy strike. Breen Dep. at 7; Petachenko Dep. at 6; Baldwin Dep. at 6.

## B. Factual Background to Counts I and II

In 1988 and early 1989, Eastern and the International Association of Machinists ("IAM")[3] unsuccessfully attempted to negotiate a new labor contract through collective bargaining. ALPA Motion at 12. The National Mediation Board ("NMB") declared an impasse and set a strike deadline date of March 4, 1989. The ALPA Eastern MEC had to decide whether to direct Eastern pilots to honor or cross IAM picket lines in the event of an IAM strike.[4]

At a February 13, 1989 meeting, the Eastern MEC adopted two formal resolutions. One declared the MEC's intention to direct pilots to honor IAM picket lines should a strike occur,[5] and the other directed MEC officers to survey the membership to measure pilot support for a sympathy strike. On February 16, 1989, MEC Chairman Jack Bavis wrote the Eastern pilots a letter and enclosed the two MEC resolutions. He stated that the MEC had resolved to ballot the pilot group "to determine its feeling in terms of honoring an IAM picket line." Bavis Dep. Exh. 2.

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[3] The IAM is a labor organization that represented Eastern mechanics and ramp service employees.

[4] Because the parties dispute the procedures necessary to conduct a strike under these circumstances, it is important to note the following. First ALPA's administrative manual, in a section titled "picket lines in the event of a strike" provides: "the decision to honor or not honor picket lines of other crafts shall be left to the discretion of the President and the MEC of the carrier involved." Rosen Decl. ¶ 11 & Exh. 2 at 10. Second, in a section titled "strike benefit policies," the manual states "When the members of an ALPA pilot group have elected to withdraw their services, the Constitution and By-Laws . . . provide a means by which assessments may be levied. . . . " Rosen Decl. Exh. 2 at 5. Finally, Article IV of the ALPA Constitution states that MEC approval is mandatory before a strike vote of the membership is taken, and that a strike vote must be by secret ballot. Rosen Decl. Exh. 1 at 22.

On February 17, 1989, ALPA sent each Eastern pilot a letter and a Ballot Poll card. Bavis Dep. Exh. 3. The letter urged each pilot to make an informed decision and noted that the MEC was very sensitive to the results of the collective ballots. *Id.* The Ballot Poll cards directed each pilot to choose one of three alternatives: "1) I would honor an IAM picket line at EAL; 2) I would not honor an IAM picket line at EAL; 3) My elected MEC representatives are best qualified to make this decision, if and when an IAM strike occurs, and I will abide by their decision." Bavis Dep. Exh. 4. The ballots indicated a return date of March 1, 1989. *Id.*

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[5] The resolution read as follows:

> BE IT FURTHER RESOLVED that it is in the best interest of the EAL pilot group to respect the picket lines of other EAL employees, and
>
> BE IT FURTHER RESOLVED that the Master Chairman is directed to communicate to the pilot group in the most expedient and thorough fashion the resolve of this MEC to extend maximum support to our fellow employees as we all confront the wanton and senseless destruction of our airline.

Bavis Dep. Exh. 1.

On March 1, the Eastern MEC met again and reviewed the results of the pilot survey.[6] On March 3, 1989, the MEC unanimously adopted a resolution directing all pilots to engage in a sympathy strike in the event of an IAM strike. Donovan Dep. Exh. 311; Rosen Decl. ¶ 16. The resolution read as follows:

> WHEREAS, it is our established legal right and traditional right as a labor organization to respect the picket lines of another labor organization,
>
> THEREFORE BE IT RESOLVED that all Eastern Air Lines pilots shall honor the International Association of Machinists picket lines and shall refuse to cross picket lines and that all pilots shall refrain from performing any work for EAL during the strike.
>
> BE IT FURTHER RESOLVED that no Eastern pilot shall return to work until a proper "back to work" agreement has been agreed to between the Association and the Company.
>
> BE IT FURTHER RESOLVED that the timing for the implementation of this resolution shall coincide with the declaration of a strike by the IAM.

Donovan Dep. Exh. 311. President Duffy concurred in the MEC's decision. Rosen Decl. ¶ 16. On March 4, 1989, the IAM went on strike at Eastern, and ALPA commenced its sympathy strike. Rosen Decl. ¶ 16.

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[6] According to ALPA, 75% of the pilots who returned the poll cards voted *either* in favor of the strike or stated that their MEC representative was best qualified to decide. Motion at 16.

On March 9, 1989, Eastern filed for bankruptcy protection under 11 U.S.C. § 1101 *et seq.* Roberts Decl. ¶ 14. Eastern attempted to lure striking pilots to cross the picket lines by promising any pilot who did that he would receive promotions to higher paying positions and displace strikers from their pre-strike positions. Roberts Decl. ¶ 15.

In Response, on March 29, 1989, the Eastern MEC unanimously resolved to "publish a finalized list of strike-breaking pilots at the conclusion of the ALPA sympathy strike" and to "bring Article VIII charges against all strike-breakers in accordance with ALPA Constitution and By-Laws." Donovan Dep. Exh. 312; Roberts Decl. ¶ 17. Plaintiffs Donovan and Farrell attended this meeting and voted to publish a final list of strike-breaking pilots. Donovan Dep. Exh. 312. The MEC required verifications from two sources that a pilot had returned or offered to return to work before including him in the list of "scabs." Baldwin Dep. at 99-100; Breen Dep. at 85-86. Some pilots challenged the inclusion of their names on this list and their names were subsequently removed. Baldwin Dep. at 100.

The Eastern MEC strike operations committee and striking pilots repeatedly advised working pilots that the union regarded them as "scabs" and that they should return to the picket line or advise the union if they had been erroneously listed as scabs.[7]

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[7] *See, e.g.*, Bavis Dep. Exh. 6 (April 3, 1989 letter from MEC Chairman Bavis to Eastern pilots alleged to have been working for Eastern, stating, "it has been alleged that you have been flying for the company . . . The complete list of those few pilots

Despite the strike's early success, Eastern managed to resume operations by employing Eastern pilots who crossed picket lines and by hiring pilots during the strike as permanent replacements. Roberts Decl. ¶ 18. By August 7, 1989, the Eastern MEC estimated that 336 pilots had returned to work for Eastern and that the company had hired 831 new trainees. Roberts Decl. ¶ 18 & Exh. 11. Between March and August 1989, Eastern succeeded in reducing its pilot staffing requirements by transferring assets and operations to other carriers and reducing its routes. Roberts Decl. ¶ 19.

During that same period, the Eastern pilot group began an internal debate over whether to continue the sympathy strike. Roberts Decl. ¶ 20. The Eastern MEC placed the future of the strike on the agenda for its August 1, 1989 meeting, while emphasizing the importance of a unified course. Roberts Decl. Exh. 17 ("the MEC will hear updates on all activities and events affecting our sympathy strike and give direction about our future course" and "the most important thing is that, whatever we do, we do it together"). On July 31, 1989, the MEC strike operations committee report reminded all pilots that "[a] pilot becomes [a] scab at [the] moment he

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who crossed the picket line will be made public to the pilot group in the next few days. Prior to that, however, I want to give you an opportunity to refute the allegation against you if you believe it to be untrue. If you feel an error has been made in listing you as *a pilot who has flown for the company,* please set the record straight and call the MEC office . . . immediately"); Breen Dep. Exh. 262 (Mailgram sent to Scabs on June 6, 1989 stating, "by scabbing, you are betraying tens of thousands of people who are fighting for their livelihood and their dignity").

signs to go back to work for Lorenzo." Breen Dep. Exh. 266. The MEC convened in Washington, D.C., from August 1 through August 5, 1989, and resolved unanimously to "hold the line with the intent of holding local council meetings," poll the membership, and reconvene. Donovan Dep. Exh. 318; Milanette Dep. Exh. 289.

On August 5, 1989, the strike operations committee advised all Eastern communication centers that the MEC had unanimously voted to continue striking, and that local meetings would be held to examine alternatives with membership input. Roberts Decl. Exh. 21.

The local council meetings, held at each pilot base from August 6-9, 1989, revealed that a majority of pilots favored continuing the strike. Roberts Decl. ¶ 24; Breen Dep. at 126. The first local council meeting, which was audio-broadcast to other cities, was held in Miami on August 6. MEC Chairman Jack Bavis and other ALPA officials at the meeting voiced their opinion that the strike should end and that the pilots should return to work to save their jobs. Response Exh. 18-20; Bavis Dep. at 99. The pilots voiced different positions during this emotional meeting. Plaintiffs Exh. 19. At the conclusion of the meeting, however, the majority of Miami-based pilots voted to continue the strike. Bavis Dep. at 132; Donovan Dep. Exh. 319. Around August 7, 1989, the Group I Plaintiffs crossed the picket lines at various Eastern locations and returned to work. Duffy Dep. at 63-64; Roberts Decl. ¶ 27.

On August 11, 1989, after the Eastern MEC had reconvened in Washington, D.C., and reviewed the results of the local council meetings, the MEC decided to continue the pilot sympathy strike. Roberts Decl. ¶ 26. On that day, President Duffy wrote to all ALPA pilots:

> As we enter the 160th day of the Eastern strike, there are a number of developments. . . .
>
> Over the past week, your national officers have been in a continuing series of meetings and consultations with the Eastern MEC. . . . In that same time frame, the Eastern pilots have reviewed their options and voted overwhelmingly not to return to work without a structured settlement of the sympathy strike.
>
> As you well know, I have given ALPA's full support for the Eastern pilots since the beginning of the strike, and I have pledged to continue to do so.

Roberts Decl. Exh. 30. The MEC's decision to continue the strike was widely disseminated to the pilot group. Roberts Decl. ¶ 26 & Exh. 39-42; Petachenko Dep. at 126-129. The striking pilots continued to maintain picket lines. Petachenko Dep. at 126-129; Roberts Decl. ¶ 27.

Also on August 11, Eastern announced that it had acquired enough crossover pilots (those who had abandoned the pilot sympathy strike) and new hires to staff its operations. Roberts Decl. ¶ 28. Eastern also commenced litigation in this Court on August 11, to establish that its new hire trainees were permanent replacements under the Railway Labor Act. *See Eastern Air Lines, Inc. v. Air Line Pilots Ass'n, Int'l,* 744 F. Supp. 1140, 1441 (S.D. Fla.); *aff'd,* 920 F.2d 722 (11th Cir. 1990).

Following these events, a number of additional Group I Plaintiffs crossed the picket lines in order to obtain reinstatement rights ahead of the remaining pilots.

*See, e.g.*, Exh. 379 at 5 (pilot O'Neill's letter to ALPA Hearing Board stating, "in October 2 I decided to go back to work, I could not be part of or follow my MEC's directive . . . I sign [sic] the recall list gambling the opportunity to be recalled or not"); Linsey Decl. Exh. 4 at 23-24 (pilot Crawford acknowledges he crossed the pilot picket line from August 11 through November 22, 1989).

Between May 1989 and September 1990, the Eastern MEC pursued internal union charges under Article VIII of the ALPA Constitution against pilots who had crossed picket lines. Dodge Decl. ¶ 2. ALPA's Hearing Board rejected the crossover pilots' defense that the charges were without merit because 1) the strike was unauthorized and 2) MEC Chairman Bavis and others had advocated a return to work during the August debate. The hearing board found all but 122 of the 845 charged pilots guilty of improperly crossing ALPA's picket lines. Dodge Decl. ¶¶ 4-5. ALPA's Article VIII Appeal Board upheld these decisions. Dodge Decl. ¶ 7 & Exh. D (Appeal Board decision noting "the debate among ALPA officials in July and August about whether to end the sympathy strike does not excuse the actions of the charged parties. . . . Debate and disagreement are a normal – and essential – part of the democratic decision making. It is the final decision, and not the debate, which is binding on the ALPA members, and in this case, the Eastern pilots and the Eastern MEC voted overwhelmingly to continue the sympathy strike").

On November 21, 1989, President Bush vetoed legislation to establish a blue-ribbon panel to investigate the labor dispute and continuing strikes at Eastern. Babbit Dep. at 145. On November 22, 1989, the Eastern MEC formally voted to end the sympathy strike and to make an unconditional offer on behalf of all strikers to return to work. Donovan Dep. Exh. 325; *See Eastern v. ALPA*, 744 F. Supp. at 1141. On January 18, 1991, Eastern permanently ceased its operations and discharged nearly all its pilots. Rosen Decl. ¶ 18.

ALPA compiled unofficial versions of the scab list during the strike, adding the names of crossover pilots and new hires over time. Reply Exh. 4, Whitaker Dep. at 113-14 & Lynn Dep. at 35-37. The list was available to anyone who wanted it. *Id.* In early January 1991, ALPA had 50,000 copies of the scab list printed. Response Exh. 25-28. ALPA encouraged the dissemination of this list to pilots at other airlines. Response Exh. 28.

Each individual Defendant has testified that he believed the scab list accurately described the crossover pilots. Duffy Dep. at 77; Babbit Dep. at 142; Breen Dep. at 141-42; Copeland Dep. at 121-22; Baldwin Dep. at 101; Petachenko Dep. at 124-25. *See also,* Babbit Dep. at 11, 32-33 (Babbit testifies he believed the sympathy strike was authorized under ALPA's administrative manual).

### C. Factual Background to Count III

ALPA and Eastern negotiated contractual labor protective provisions[8] ("LPPs") in the 1986 ALPA-Eastern collective bargaining agreement. These LPPs were designed to protect ALPA members in the event of a merger. Shortly after the parties reached an agreement, Eastern was acquired by Texas Air.[9] Eastern then sued ALPA in an attempt to repudiate the 1986 agreement and the LPPs.[10] The district court rejected Eastern's claim, concluding the parties had entered into a valid collective bargaining agreement. *Eastern Air Lines, Inc. v. Air Line Pilots Ass'n, Int'l,* 670 F.Supp. 947 (S.D. Fla. 1987), *aff'd,* 861 F.2d 1546 (11th Cir. 1988). In addition, the district court ordered Eastern to submit disputes involving interpretation of the LPPs to arbitration. *Id.*

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[8] LPPs in the airline industry protect employees adversely affected by the merger of two carriers. For example, they may provide protection of seniority rights through mandatory integration, pay protection, and relocation allowances. Before

ALPA and Eastern then arbitrated their LPP grievance before the ALPA-Eastern System Board of Adjustment. The System Board issued a decision defining the precise terms of the contractual LPPs. Rosen Decl. ¶ 45. According to the System Board, the LPPs required pilot seniority lists to be integrated if a merger had occurred. *See In re Ionosphere Clubs, Inc. v. Air Line Pilots Ass'n, Int'l,* 922 F.2d 984, 987 (2d Cir. 1990).

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the deregulation of the airline industry in 1978, the government ordinarily imposed statutory LPPs in airline mergers. Since at least 1985, however, the Department of Transportation has refused to impose LPPs. As a result, unions have negotiated their own merger protections through collective bargaining. *See, Air Line Pilots Ass'n, Int'l v. Dep't of Transp.,* 838 F.2d 563, 565 (D.C. Cir. 1988).

[9] Texas Air was the corporate parent of Continental Air Lines.

[10] In the meantime, ALPA sought to persuade the government to impose statutory LPPs as a condition of approving various air line acquisitions. *Air Line Pilots Ass'n, Int'l v. U.S. Dep't of Transportation,* 838 F.2d 563 (D.C. Cir. 1987).

ALPA then filed a grievance contending that Texas Air's coordination of the previously separate operations of Eastern and Continental Air Lines ("Continental") triggered the contractual LPPs, thus requiring Eastern and Continental to integrate their pilot workforces. Rosen Decl. ¶ 46. This grievance gave rise to further litigation. Initially, a bankruptcy court stayed arbitration with respect to this grievance.[11] *In re Ionosphere Clubs, Inc.*, 105 B.R. 765 (Bankr. S.D.N.Y. 1989). On appeal, Eastern was ordered to submit to arbitration on this issue. *See, In re Ionosphere Clubs, Inc.*, 114 B.R. 379 (S.D.N.Y. 1990), *aff'd in rel. part*, 922 F.2d 984 (2d Cir. 1990), *cert. den'd*, 502 U.S. 808 (1991).

A prehearing conference before Arbitrator Richard R. Kasher took place on February 2, 1993. At this time, Eastern stated that it had agreed to settle with ALPA, and that Eastern would not contest the LPP proceedings. Response Exh. 54 at 12-13. During the prehearing conference, those present discussed whether it would be necessary to compel Continental and certain pilot groups to participate in the proceedings. Response Exh. 54 at 15-22. ALPA voiced the position that Continental had chosen not to appear at its own peril. Further, ALPA maintained that, in a strict legal sense, the interests of the pilot groups – not the carrier – were at issue. *Id.* at 15. Before concluding the prehearing conference, Arbitrator Kasher noted that the parties would try to reconvene for an arbitration hearing in Washington, D.C., in May 1993. The arbitration hearing was scheduled for May "at the convenience of the Arbitrator and due to the logistics of pulling together the number of [necessary] documents. . . . " Response Exh. 54 at 28; *see also,* Linsey Supplemental Decl. Exh. 1 (March 12, 1993 letter from ALPA's counsel to Arbitrator Kasher reiterating ALPA's concern that the arbitration commence as soon as possible).

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[11] Eastern had filed a bankruptcy petition in March 1989.

In the meantime, the bankruptcy court overseeing Continental's second Chapter 11 reorganization issued various orders that impacted the Eastern pilots' LPP claim. On February 11, 1993, the bankruptcy court concluded that Continental would not be required to integrate Eastern pilots into the Continental pilot seniority list and that the LPP claim was not entitled to administrative priority. Rosen Decl. Exh. 26 at 4. On April 16, 1993, the bankruptcy court issued a subsequent order confirming Continental's reorganization plan, which permanently enjoined ALPA from submitting the LPP dispute to arbitration. Rosen Decl. Exh. 27 & 28. ALPA appealed these orders. On July 29, the bankruptcy court issued an order permitting Continental to value the Eastern pilots' LPP claim as a $217 million prepetition general unsecured claim to be paid in Continental stock. Rosen Decl. ¶ 52 & Exh. 29. On September 3, the district court denied ALPA's emergency motion to stay this order pending appeal. Rosen Decl. ¶ 52 & Exh. 30.

Plaintiffs contend that ALPA, throughout this period, had little interest in protecting their rights under the LPPs because ALPA was actively financing and preparing a pilot representation campaign at Continental Air Lines. Response at 35. According to the record, on April 9, 1993, the NMB authorized a ballot election for the Continental pilots. *See In the Matter of Applications of the Independent Ass'n of Continental Pilots,* 20 N.M.B. 326, 344-45 (April 9, 1993). On April 13, ALPA's Executive Council resolved to begin a representation campaign among Continental pilots and authorized a budget for this purpose. Linsey Supp. Decl. at Exh. 2. On April 22, ALPA representatives met with Continental, a competing labor union, and an NMB representative to obtain voter eligibility lists and mailing labels for the elections. Response Exh. at 58.

Plaintiffs refer the Court to several communications that ALPA sent to Continental pilots during the campaign. For example, on May 7, 1993, ALPA distributed a publication to Continental pilots explaining "the Eastern LPP case." Response Exh. 59. The publication explained that the on-going dispute pertained to Eastern's contractual LPPs which had been negotiated in 1986 between Eastern and ALPA. The publication noted that the LPP claim was unrelated to ALPA's "merger policy."[12] *Id.* Further, it traced the history of the LPP dispute and noted that ALPA was appealing the bankruptcy court's decisions. *Id.* Subsequently, on June 18, 1993, ALPA's President wrote the Continental pilots and informed them that ALPA would not attempt to obtain seniority positions at Continental for Eastern pilots through either its merger policy or collective bargaining. Response Exh. 62. In reference to the Eastern pilots' LPP claims, President Babbit again noted that the pilots' claim was contractual and unrelated to ALPA's merger policy. *Id.*

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[12] ALPA's official merger policies are contained in section 45 of ALPA's administrative manual. These policies address the conflicting interests of the pilot groups within ALPA when two ALPA carriers merge operations. *See* Rosen Decl. ¶ 22 & Exh. 5.

At some point ALPA disseminated literature that contained a quote by John Gallagher, an attorney for Continental Air Lines: "The possibility of Eastern Pilots for Fairness[13] ever becoming Continental pilots is nil." Response Exh. 63.

Finally, in July 1993, the Continental pilots voted for representation by an in-house union rather than ALPA. Rosen Decl. ¶ 61. ALPA began settlement negotiations with Continental several months after this election. Rosen Decl. ¶ 61.

According to ALPA, the bankruptcy court's adverse rulings and the anticipated depletion of Continental's reserves[14] prompted ALPA to enter into a settlement with Continental as to all outstanding litigation, including the LPP claims. Motion at 45. The settlement, entered on March 24, 1994, afforded ALPA: 1) a $350 million unsecured claim to be paid in cash and Continental stock to eligible Eastern pilots who elected to participate in the settlement, 2) past privileges for free travel on Continental Airlines for Eastern pilots not employed by major carriers, and 3) preferential hiring opportunities at Continental for up to 225 former Eastern pilots. Rosen Decl. ¶ 54 & Exh. 31. According to ALPA, approximately 2,500 pilots (97 of whom are Plaintiffs in this action) chose to participate in the settlement. Linsey Decl. ¶ 11 & Exh. 10. Pilots who elected not to participate retained the right to pursue any LPP claims they had previously filed in the Continental bankruptcy. Rosen Decl. ¶ 55.

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[13] At the time, Plaintiffs in this action were identified as "Eastern Pilots for Fairness."

[14] ALPA asserts it was concerned that Continental's reserves for paying disputed claims would be depleted by the time the LLP dispute was fully adjudicated, as the reorganization plan permitted Continental to pay these claims on a first-come, first-serve basis. Motion at 45 n. 20.

On July 19, 1994, the bankruptcy court approved the settlement agreement. Rosen Decl. Exh. 32. Subsequently, the district court affirmed the bankruptcy court's 1993 decisions holding that the LPP claim was, at most, a general unsecured claim that could only be satisfied through payment of stock and cash under Continental's reorganization plan. Rosen Decl. Exh. 33, *In re Continental Air Lines*, No. 93-163 (D. Del. Nov. 29, 1995).

## II. STANDARD OF REVIEW

Federal courts shall grant summary judgment when no genuine issue of material facts exists and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). The Court must view all the evidence in the light most favorable to the non-moving party. *Samples ex rel. Samples v. Atlanta*, 846 F.2d 1328, 1330 (11th Cir. 1988). All reasonable doubts as to the facts are to be resolved in favor of the party opposing summary judgment. *United States v. Four Parcels of Real Property*, 941 F.2d 1428, 1437 (11th Cir. 1991).

While the burden on a party seeking summary judgment is great, the opposing party has a duty to present affirmative evidence in order to defeat a properly supported motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986); *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115 (11th

Cir. 1993). A mere sliver of evidence in favor of the party opposing the motion, or evidence that is merely colorable or not significantly probative, is insufficient to defeat a properly supported motion for summary judgment. *Anderson,* 477 U.S. at 252. Despite the presumption in favor of the non-moving party, it must be borne in mind that the purpose of Rule 56 is to eliminate the needless delay and expense to the parties and to the Court occasioned by an unnecessary trial. *Celotex,* 477 U.S. at 322-23.

## III. COUNTS I AND II

### a. The standard

In Counts I and II, Plaintiffs accuse Defendants of defamation. Specifically, the Group I Plaintiffs allege that Defendants – knowing Plaintiffs in Group I had not crossed the picket lines until instructed to do so by ALPA officers and the MEC Chairman – compiled, published, and distributed a blacklist designating them "scabs." Complaint ¶ 25. Similarly, the Group II and III Plaintiffs accuse Defendants of compiling, publishing and distributing a "Blacklist" designating these Plaintiffs as scabs, although the Defendants knew the strike had not been authorized pursuant to ALPA's Constitution and Bylaws. Complaint ¶ 28. The Court addresses both counts and arguments collectively.[15]

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[15] The Court assumes without deciding that Florida Rule of Civil Procedure 1.170 does not bar the claims of those Plaintiffs who were defendants in *Air Line Pilots Ass'n v. Sabelsak,* Case No. 90-47218 (Fla. Cir. Ct. 11th Cir.) and *Air Line Pilots Ass'n v. Schneemilch,* Case No. 90-47219 (Fla. Cir. Ct. 11th Cir.).

As a preliminary matter, the Court notes it has previously determined that the standard enunciated in *Linn v. United Plant Guard Workers,* 383 U.S. 53 (1966) and *Old Dominion Branch No. 496, National Ass'n of Letter Carriers v. Austin,* 418 U.S. 264 (1974), governs Plaintiffs' defamation claims. *See Dunn v. Airline Pilots Ass'n,* 836 F. Supp. 1574, 1580-81 (1993).[16] Under this standard, Plaintiffs may recover only if they can show that (1) the "scab" list was false and (2) the list was published with *actual malice,* defined as knowledge of its falsity or reckless disregard as to whether it was true or false. *Linn,* 383 U.S. at 65; *NLRB v. Lummus Indus. Inc.,* 679 F.2d 229, 235 (11th Cir. 1982). In addition, Plaintiffs must prove harm. *Linn,* 383 U.S. at 65. The Court finds no record evidence that the description of Plaintiffs as scabs was either false or that the list was published with actual malice. As Plaintiffs have failed to show a genuine issue of material fact exists as to either of these elements, the Court will grant summary judgment in favor of Defendants on Counts I and II.[17]

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[16] The Court rejects Plaintiffs' contention that the standards of *Linn* and *Letter Carriers* do not apply. Plaintiffs argue this case is distinguishable from *Linn* and *Letter Carriers* because Defendants' actions allegedly occurred *after* the labor dispute between Eastern and ALPA had come to an end. Response at 17-19. The Court has previously rejected a similar argument. *Dunn,* 836 F.Supp. at 1580-81. Furthermore, *Letter Carriers* evinces a federal policy in favor of protecting a broad range of union speech and debate, including that which is aimed at shoring up support among union-represented employees. *Letter Carriers,* 418 U.S. at 277-79; *Dunn,* 836 F.Supp. at 1581. Finally, the Court notes the Defendants compiled the list and made it available during the strike.

[17] Accordingly, the Court declines to address Plaintiffs' allegations of harm.

**(b) Falsity**

This Court has previously recognized that a "scab" is one who works for less than union wages or on nonunion terms. *Dunn*, 836 F.Supp. at 1581. Crossing a picket line during a sympathy strike constitutes working on nonunion terms. *Id.* The parties do not dispute that on March 4, 1989, after reviewing the results of a pilot survey, the Eastern MEC initiated a pilot sympathy strike by resolution.[18] This sympathy strike continued through November 22, 1989. At some point between March 4 and November 22, Plaintiffs in Group I, II and III crossed picket lines to work. Under these circumstances, the Court concludes that all the Plaintiffs were accurately described as scabs. Absent evidence that the allegedly defamatory statement was false, summary judgment is proper.

In an attempt to avoid summary judgment, Plaintiffs argue the sympathy strike was not lawful because it was not authorized by a membership vote, which Plaintiffs maintain was required under ALPA's Constitution and By-Laws. Accordingly, Plaintiffs contend they cannot be scabs. This argument is without merit.[19] Courts will ordinarily uphold a union's interpretation of its own governance documents unless the interpretation is so patently unreasonable or implausible that it does not deserve deference. *Dow v. United Brotherhood of Carpenters and Joiners of America*, 1 F.3d 56, 58 (1st Cir. 1993). Absent bad faith or special circumstances, a court should not disturb an interpretation of a union constitution by union officials, as well as interpretations of the union's rules and regulations. *Local 1052 of the United Brotherhood of*

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[18] Plaintiffs' argument that, despite this resolution, each individual pilot could choose whether or not to honor the picket line lacks merit. Plaintiffs rely on a May 1989 letter by MEC Chairman Jack Bavis in which he states that "each pilot made an independent decision" and that the "individual and independent decision [has] remained under review by each pilot and pilot family." Response at 9. This statement merely recognizes that pilots retain the legal right to choose not to strike, despite their union's directive. *See Transworld Airlines, Inc. v. Independent Fed'n of Flight Attendants*, 489 U.S. 426, 436 (1989).

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[19] The Court also rejects Plaintiffs' reliance on the testimony of Captain Bavis during a preliminary injunction hearing on March 7, 1989. Response at 6-7. While Captain Bavis did refer to an "elective process," he did not testify that a membership vote was a legal prerequisite to calling a sympathy strike. Further, he also noted that the MEC had passed a resolution to ballot the membership "in terms of their own feelings over the question of honoring the picket line or not." Response, Exh. 8. This testimony is not inconsistent with Defendants' current position.

The Court similarly rejects Plaintiffs' contention that a March 3, 1989 telefax, sent to the ALPA membership instructing pilots not to use the word "strike," is evidence that Defendants knew the strike was unauthorized. Response at 8; Response Exh. 11. First, the telefax itself states "We are staging a *sympathy* strike." Further, at the time, Eastern had sued ALPA to enjoin the union from striking without exhausting resolution mechanisms mandated under the Railway Labor Act. Eastern argued that ALPA was engaged in a pretextual primary strike, which required exhaustion of resolution mechanisms, rather than a sympathy strike. *Eastern*, 710 F.Supp. 1342 (S.D. Fla. 1989). In the context of this on-going litigation, it is clear that ALPA's directive in the telefax was meant to emphasize that the union was engaged in a sympathy strike. Accordingly, it does not support Plaintiffs' argument.

*Carpenters and Joiners of America v. Los Angeles County Dist. Council of Carpenters,* 944 F.2d 610, 613 (9th Cir. 1991).

Plaintiffs rely primarily on Article IV of the ALPA Constitution, which states that approval of the MEC is mandatory before a strike vote of the membership is taken and that a strike vote must be by secret ballot. Rosen Decl. Exh. 1 at 22. In addition, Plaintiffs point to ALPA's administrative manual which, under the subtitle "Strike Benefit Policies," states: "When the members of an ALPA pilot group have *elected* to withdraw their services, the Constitution and By-Laws . . . provide a means by which assessments may be levied upon all ALPA members in order to provide assistance to those members engaged in a strike" (emphasis added). Rosen Decl. Exh. 2 at 5.

Defendants, on the other hand, refer the Court to ALPA's own interpretation of its Constitution and Strike Policy, codified in 1966 in ALPA's Administrative Manual and reaffirmed in 1986 by ALPA's Board of Directors. The Administrative Manual provides: "the decision to honor or not honor picket lines of other crafts shall be left to the discretion of the President and the MEC of the carrier involved." Rosen Decl. ¶ 11; Exh. 2 at 10.[20] According to Defendants, ALPA typically uses the procedures outlined in Article IV of the Constitution to conduct formal membership votes in primary strikes. Rosen Decl. ¶¶ 11-15. ALPA has consistently interpreted its Constitution and Strike Policy to authorize the MECs and ALPA's president to conduct *sympathy* strikes, however, without a membership strike vote. *Id.*; Motion at 62. With respect to Plaintiffs' reliance on provisions of the strike benefit policy, Defendants correctly note that the policy does not address the authorization of sympathy strikes. Further, Defendants note that the word "elect" in the strike benefits policy means "choose," rather than "vote." The Court finds Defendants' interpretation of its own governance documents neither patently unreasonable nor implausible. Accordingly, the Court finds the sympathy strike was lawfully conducted.

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[20] In 1989, ALPA's internal hearing board also has found that the Eastern MEC was empowered to order its members to conduct a sympathy strike under this interpretation.

Plaintiffs also attempt to avoid summary judgment by arguing that they do not fall within the definition of the word "scab" because they crossed the IAM picket line to fly, rather than to do the strikers' work – that is, machinists' work. Response at 10. Their argument is premised on Defendant Copeland's testimony that he did not consider himself a scab when he crossed a flight engineers' picket line in 1962 to fly for Eastern, because he did not do the work of a flight engineer. Response at 11. However, this comparison is improper. When the flight engineers struck Eastern in 1962, ALPA was not engaged in a sympathy strike. Accordingly, this argument also lacks merit.

Finally, Plaintiffs in Group I argue they were falsely labeled scabs because MEC Chairman Bavis and representatives of ALPA National advised them during a Miami LEC meeting to return to work in August 1989. Response at 14-16; Response Exh. 18 (interrogatory responses of various pilots). A review of the record confirms that various ALPA and Eastern MEC officials voiced their view that the pilots should consider returning to work. However, it is clear that these views ere expressed in the midst of a continuing debate while the strike was in place. It is also clear that, throughout this debate, communications from ALPA indicated that the strike was on-going. In fact, on August 5, 1989, the Eastern MEC had voted unanimously to continue the sympathy strike pending LEC meetings at each base to determine whether the membership wished to continue the strike. The Miami meeting was one of many LEC meetings held between August 6 and August 9 at each pilot base to discuss the strike. Viewed in that context, the opinions of union officials voiced during a debate in an LEC meeting cannot be construed as a directive from ALPA instructing the pilots to end the strike, cross the picket lines, and return to work prior to November 22, 1989. Accordingly, Plaintiffs' argument cannot defeat Defendants' motion for summary judgment.

### c. Actual Malice

As the Court has noted, Plaintiffs may recover only if they can show that Defendants published the scab list with actual malice – that is, knowing that it was false or with reckless disregard as to whether it was true or false. *Linn*, 383 U.S. at 65. The actual malice test is subjective, as it focuses on the state of the Publisher's mind at the time of publication. *Holbrook v. Harman Automotive, Inc.*, 58 F.3d 222, 226 (6th Cir. 1995).

The record contains no evidence that any of the Defendants published the scab list with actual malice.

First, Defendants testified that they believed the crossover pilots were accurately described as scabs because they abandoned the sympathy strike to take the jobs of striking pilots. Second, there is record evidence that ALPA checked the accuracy of the list. For example, MEC Chairman Bavis wrote to pilots on the list, giving them an opportunity to object if they had been erroneously included. Third, Defendants testified that they believed the sympathy strike was lawfully conducted pursuant to ALPA's administrative manual.[21]

Plaintiffs unsuccessfully attempt to avoid summary judgment on this issue by raising the same arguments the Court rejected with respect to falsity. Response at 19-20. For the reasons previously stated, the Court finds these arguments cannot defeat Defendants' motion for summary judgment. Accordingly, the Court will enter summary judgment in favor of Defendants with respect to Counts I and II.

## IV. COUNT III

### a. The Standard

In Count III, Plaintiffs allege that Defendant ALPA breached its duty to fairly represent them by failing to make good faith efforts to enforce LPPs contained in the 1986 ALPA/Eastern agreement. Complaint ¶ 60. Specifically, Plaintiffs maintain ALPA failed to enforce the

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[21] In fact, ALPA successfully brought formal internal charges in 1989 against ALPA members who had crossed ALPA picket lines during the strike. ALPA's hearing board rejected many of the same arguments Plaintiffs raise in their Response.

LPPs in order to persuade pilots at Continental Airlines to vote for ALPA as their bargaining representative in an election mandated by the NMB. Complaint ¶ 61.[22]

The United States Supreme Court has clearly identified the components of a union's duty of fair representation. A union breaches its duty to fairly represent its members if its actions are either arbitrary, discriminatory, or in bad faith. *Air Line Pilots Association, Int'l v. O'Neill,* 499 U.S. 65, 67 (1991). This standard applies to all union activity. *Id.* A union's actions are deemed arbitrary if, in light of the factual and legal landscape at reasonableness as to be irrational. *Id.* A union's actions are discriminatory if they are motivated by intentional and severe discrimination that is unrelated to any legitimate union objective. *Motor Coach v. Lockridge,* 403 U.S. 274, 301 (1971). Finally, a union acts in bad faith if there is substantial evidence of fraud, deceitful action, or dishonest conduct. *See Humphrey v. Moore,* 375 U.S. 335, -348 (1964).

This Court is mindful of the Supreme Court's directive that any substantive examination of a union's performance "must be highly deferential, recognizing the wide latitude that negotiators need for the effective performance of their bargaining responsibilities." *O'Neill,* 499 U.S. at 78. In addition, because Plaintiffs' allegations of misconduct involve ALPA's *settlement* of LPP claims with Continental

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[22] Initially, Plaintiffs also asserted ALPA had breached its duty of fair representation by failing [sic] make good faith efforts to implement and apply its Merger and Fragmentation Policy. Complaint ¶ 60. However, Plaintiffs are no longer pursuing this claim. Response at 38 n.10.

Airlines, this Court must consider the strong policy favoring the peaceful settlement of labor disputes. *Id.*

Plaintiffs contend that ALPA's actions with respect to the enforcement of the LPP provisions were arbitrary, discriminatory and in bad faith. Plaintiffs maintain ALPA deliberately delayed arbitration proceedings before Arbitrator Kasher because it was seeking the Continental pilots' vote in a representation election. The Court finds no factual support in the record for this argument. First, there is no evidence that ALPA stalled the arbitration proceedings. At the prehearing conference on February 2, 1993, the Arbitrator noted that in order to convenience him and also due to the voluminous information that was needed, the arbitration proceedings would reconvene in May 1993. In the interim, the bankruptcy court overseeing continental's reorganization plan issued two orders which adversely impacted the Eastern pilots' LPP claim. In July 1993, a third adverse ruling followed. ALPA's decision to devote its energy and time to appeal these rulings was rational and reasonable under the circumstances. Further, Plaintiffs have adduced no evidence that this strategy was discriminatory or taken in bad faith.[23]

Similarly, ALPA's decision to settle with Continental was not arbitrary. The settlement was prompted in part by 1) three bankruptcy court rulings that adversely impacted the Eastern pilots' LPP claims and 2) ALPA's concern that Continental's reserves for paying disputed claims would be depleted by the time the LPP dispute was finally adjudicated. Nor was the decision to settle discriminatory or taken in bad faith. Although Plaintiffs suggest that ALPA was influenced by its desire to prevail in the Continental pilots' representation election, the sequence of events and the record evidence belies this position. Settlement negotiations between Continental and ALPA did not start until after the Continental pilots' representation election had taken place. Rosen Decl. ¶ 61.[24] Indeed, the two parties did not reach a final settlement until March 1994 – approximately eight months after the Continental pilots had elected a union.[25]

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[23] Plaintiffs also appear to suggest that, during the February 2, 1993 pretrial conference, ALPA's failure to disclose that it was "actively financing, orchestrating and preparing a representation campaign at Continental" was evidence of discrimination or bad faith. The record indicates, however, that the National Mediation Board did not authorize the election until April 9, 1993, and that ALPA did not resolve to begin a representation campaign until April 13, 1993.

Plaintiffs also suggest that ALPA's efforts to enforce the LPPs distinguished between Plaintiffs and full-term striking pilots, favoring the latter.[26] Response at 34. However, there is no evidence that ALPA distinguished between one pilot group and another in pursuing the LPP claims.[27]

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[24] Although Plaintiffs appear to dispute this, they offer no record evidence to support their position.

[25] Accordingly, Plaintiffs' reliance on ALPA's publications disseminated during the election campaign is misplaced. In any event, the publications indicate no evidence of bias with respect to the LPP dispute.

[26] Plaintiffs rely on correspondence from ALPA that bears no relevance on the issue of the Eastern pilots' LPP dispute with Continental. *See* Response Exh. 56.

[27] For example, the settlement with Continental was available to all Eastern pilots on the same terms.

In conclusion, Plaintiffs have failed to produce any evidence that ALPA's actions with respect to the enforcement of the Eastern pilots' LPP claims – including its ultimate decision to settle these claims with Continental – was in any sense arbitrary, discriminatory, or in bad faith.

## V. CONCLUSION

For the reasons stated in this opinion, it is

ORDERED AND ADJUDGED as follows:

(1) Defendants ALPA, Duffy, and Babbitt's Motion for Summary Judgment is GRANTED;

(2) Defendants Copeland, Breen, Baldwin, and Petachenko's Motion for Summary Judgment is GRANTED;

(3) Defendants shall submit a proposed final judgment within ten (10) days from the date stamped on this order.

DONE AND ORDERED in Chambers at Miami, Florida, this 28th day of July, 1997.

/s/ Edward B. Davis
EDWARD B. DAVIS
CHIEF UNITED STATES
DISTRICT JUDGE

cc: Myles J. Tralins, Esq.
Robert C. Josefsberg, Esq.
Robert T. Kofman, Esq.
James L. Linsey, Esq.
Stuart Goldstein, Esq.
Joseph S. Norman, *pro se*

## APPENDIX C

## IN THE UNITED STATES COURT OF APPEALS
## FOR THE ELEVENTH CIRCUIT

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No. 97-5587

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LARRY DUNN, TOM DUCKWORTH, et al.,
Plaintiffs-Appellants,

versus

AIR LINE PILOTS ASSOCIATION,
HENRY DUFFY, et al.,
Defendants-Appellees.

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On Appeal from the United States District Court
for the Southern District of Florida

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ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC (Opinion ___, 11th Cir., 19___, ___F.2d___).

(Filed Dec. 17, 1999)

Before: TJOFLAT, DUBINA and HULL, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate

Procedure; Eleventh Circuit Rule 35-5), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Frank M. Hull
UNITED STATES CIRCUIT JUDGE

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## APPENDIX D

## LIST OF PARTIES

Airline Pilots Association
Jose A. Alvarez, Jr.
Ralph Anderson
George M. Andrews, Jr.
Thomas J. Angeletti
Francis C. Armstrong, III
William M. Atteberry
Matt Babayan
Randolph Babbit
James H. Baldridge, Jr.
Lewis Baldwin
Frank Baque, III
Patrick S. Barge
Bryant Barnes
William H. Barnes
David R. Bartlett
James H. Bauch
Ronald E. Beard
Donald G. Beattie
Robert L. Beels
Peter J. Behr
David A. Bell
Larry A. Bell
Dean A. Berghane
David S. Bergstein
Stephen Y. Bergstrom
Timothy N. Berwick
Peter J. Bialko
Bruce G. Bichan
Charles R. Bisgnano
Otis T. Blankenship, Jr.
Victor E. Blix, III
Dudley W. Boone
Piers R. Bramham
William M. Brandt
Dirk Bredthauer
Edward Breen
James D. Bridges
Paxton H. Briley
David L. Browning
Grant H. Brundage, Jr.
Charles C. Bryant
William D. Bundrant
Edward S. Buntin, Jr.
Ronnie L. Burkhart
David A. Burns
Richard E. Capon
George L. Carl
Bruce R. Carter
Bruce F. Chaille
Carl M. Champagne
James E. Chapo
Jonathan E. Charnes
Rafael E. Chirino
Anthony S. Christopher
Dennis J. Cirrotti
Francis X. Clark
Geoffrey B. Coe
John D. Cole
William F. Cole

John P. Compton
Carl Don Cook
Kenneth E. Cook
Jack D. Corbitt
Stephen B. Cotter
John R. Cowen
Wendell E. Crane
Cliff M. Craus
David B. Crawford
Kenneth P. Crow
James M. Crush
Thomas R. Curran
Edward M. Curtis
William F. Davidson
Gerald O. Davis
David J. Davison
Edward B. Davis
William P. Davoust
Maury A. Deming
John A. Devereaux
Randall L. Dickinson
George A. Dickman
C. Wayne Dixon
Gordon W. Dobson
Frank H. Doglione
Michael F. Donovan
Benny R. Doran
Thomas O. Duckworth
Henry Duffy
Charles P. Dundas
Larry J. Dunn
Rick A. Dunn
John P. Durante
Gregory P. Durkin
Jerry D. Eastman
Joel Eaton
Kenneth A. Edwards
Ronald S. Egut
James C. Emery, Jr.
Warren L. Engelke
Gary M. English
Alan W. Erickson
Richard H. Evans
Thomas E. Fagan
Charles L. Fahn
Glenn E. Fant, Jr.
Jack H. Farenga
Earnest L. Farnsworth
Richard L. Farrell
Henry C. Faulkner, Jr.
John E. Feliu
Gerald Ferte
John D. Ficklen, III
Joel F. Fisher, III
Errol D. Forman
Douglas W. Forrest
Scott Forsberg
Kerry A. Foster
Robert W. Foster
James E. Fowells
Richard H. Francis
Bennie W. Frazier
Luis R. Freytes
Donald A. Fritch
Albert A. Fryling
John J. Fugedy

Estan L. Fuller
Larry L. Gamel
Carrol J. Gary
Henry R. George
James D. Geraghty
Randall W. Gibson
James S. Glasgow
Martin F. Glennon
Barry W. Gorman
Ferdinand L. Grau
Gerald A. Green
Grant S. Green
David L. Greene
Gary J. Greksa
Arles A. Grenie
Donny E. Griffin
Roger P. Griggs
William V. Groff
Allen R. Gruetzner
George H. Gunn
John T. Gurl
Howard W. Hall
Diane M. Halloran
Fred C. Haney
Ronald G. Hanshaw
George F. Harn
James A. Harris
Robert J. Harriss
Joseph D. Hartley
James T. Hartman
Patrick R. Hassett
Gregory A. Hastings
Richard H. Heckenberger
Alan P. Heinrich
Robert R. Hessler, Jr.
Harvey W. Hiatt, Jr.
Mark Hicks
Raymond F. Higgins
James P. Hinsdale
William D. Hipps
Ben Hodgers
Janeral L. Holley
James W. Hooton
James W. Howard
William P. Howley
James R. Hughes, Jr.
Robert C. Huron
Culpepper Ingram
Brownie N. Inman
Fred H. Jackson, Jr.
Estate of
  Leonard Jacobowitz
Alfred A. Jaskewicz, Jr.
William H. Johansen
Charles T. Johnson
Gary M. Johnson
Leland J. Johnson
Richard A. Johnson
Richard A. Johnson
Robert E. Johnson
William O. Jordan
Robert Josefsberg
Steven G. Kane
Theodore L. Kay
Ralph L. Keeler, Jr.
Jesse H. Kent

Nazir Khan
Richard A. Kingwell
Anthony F. Klopp
Estate of David Kluthe
Lawrence N. Kritcher
Gary E. Krotz
Hugo E. Kurtz
James R. Laine
John M. Lambie
Robert H. Lampke
George Landa
Donald J. Landry, Jr.
Franklin W. Lane
Gordon B. Lane, Jr.
William A. Langel
Lawrence E. Langer
Chauncey M. Lapp, Jr.
Richard C. Latham
Eugene F. Lavarello
Dennis A. Lazar
Robert G. Lea
Allan R. Lee
John G. Leonard
John A. Lewicki
Kurt M. Liebing
Anthony Lindner
Charles R. Link
Lawrence A. Link
Gustavo A. Lorenzo
Frank W. Love
Henry C. Lynn
Henry B. Lyter, Jr.
Steven J. Malone
William B. Mann, Jr.
Jerry V. Marcinek
Edward H Marino
Robert W. Marshall
Norman A. Mathisen
Harold A. Matt, Jr.
Patrick M. Matthews
Peter J. Maugeri
Larry McCabe
John A. McCarthy
Kenneth L. McCartney
Spencer L. McConnell
James M. McCormick
David J. McKennan
Arthur T. McKeon, Jr.
John A. McLaughlin, Jr.
James D. McRae
Barry L. Meadow
James A. Means
Eduardo F. Mendez
Hector M. Merly
Donald K. Michael
Anderlin F. Mihalow
Terry Milanette
Charles A. Miller
Daniel P. Miller
Frank P. Miller
James A. Miller
William B. Miller, III
James V. Minardi
Paul R. Misencik
Edward Miskotten, Jr.
Don S. Mitchell

George J. Mittelstaedt
Robert E. Moffitt
Donald B. Moore
Roy E. Moore, Jr.
Frank J. Morrey
Edward H. Morrison
Carl F. Moslener
Richard A. Munsterman
H. Martin Murray
Charles R. Musick, Jr.
Robert L. Nall, Jr.
Douglas C. Nelson
Ronald A. Ness
Peter G. Neumann
Leonard R. Nicchia
Ramon E. O'Neill
Joesph S. Norman
Donald H. Oberlander
Michael S. Olin
George K. Olsen
James F. Ouzts, Jr.
Frank G. Palermo
Douglas M. Palmer, III
Richard E. Parkinson
William J. Parr
Marcus L. Parramore
L. Trenton Pauley
Donald J. Peacock
Robert C. Peacon
David G. Perkins, III
Albert G. Perry, Jr.
Mark E. Peterson
Herbert W. Peterson, Jr.
Joel Perwin
H. Phillips
Terry E. Phillips
Kent R. Pinkerton
Roger P. Pipkin
Martin H. Potter
Elisha T. Powell
Leonard R. Putonen
Tilak S. Ramaprakash
Fletcher H. Rawls, III
Warren J. Redd, Jr.
Charles D. Reeh
Karl M. Reik, Jr.
Ronald E. Reinholtz
Al Reitan
Frank L. Richards
Robert M. Ricketts, Jr.
Douglas J. Rogers
Bruce J. Ross
Thomas D. Ross
Jarib M. Sanderson, Jr.
Stanley Santiago
Detlef P. Sauer
David H. Savage
Donald N. Schanzlin
John R. Schedel
James A. Schrag
David O. Schriner, Jr.
Dale H. Schultheis
Eugene F. Secor
Gary W. Self
Hubert J. Sewell, Jr.
David Sharpe

Gary C. Shepard
John W. Shoun
Larry L. Shriver
Hussein H. Sidky
David L. Smith
Estate of Andrew C. Smith
Jack G. Smith
Samuel G. Spieker, Jr.
Carl S. St. Philip
Richard W. Standish
Donald H. Stanton
Roman L. Stevens
Donald E. Steward
Wayne M. Stewart
Arthur C. Stifel, III
Alan C. Stone
Cary A. Stone
Edward E. Stone
Raymond G. Stone, Jr.
Calvin E. Stow
James R. Strader
K. Wayne Stradley
Robert B. Street, Jr.
Donald B. Strong
Michael W. Strus
Otto J. Stupka, III
John L. Sullivan
Robert F. Sullivan
Ennis C. Sullivan, II
Russell E. Sykes
John E. Syman
Dean H. Taylor
Robert A. Taylor
Glyn M. Taylor, Jr.
Carlef A. Terkildsen
Brantley D. Tew, Jr.
Stephen C. Thompson
John B. Thomson, III
Kenneth A. Thornton
John W. Tibbetts
Oliver A. Toole, IV
James R. Townley, Jr.
Donald W. Trauger
Juan A. Trigo
David W. Tucker
J. Barry Turman
J. R. Turner
William C. Turnoff
Richard L. Unger
Michael T. Urso
Leon L. Van Hoosear
Ronald W. Vara
Stephen D. Vaughan
Charles H. Vesty
Gary W. Vice
Philip H. Vietmeyer
Rafael Villanueva-Diaz
William C. Voepel, Jr.
John E. Voudy
Joe D. Vrechek, Jr.
Thomas F. Walby
Tony W. Walker
Frank O Walther
Donald E. Warren
Allen K. Watt
James R. Weir

Allston E. Weller, Jr.
Roger D. Wengert
James B. West
Robert C. Westphall
Robert B. Whitaker
Robert L. White
Donald F. Whitley
James R. Wilkie, Jr.
Jan C. Williams
Herbert P. Willis
Wesley A. Wingate
Dean S. Wright
Robert E. Zeng
Thomas J. Ziobro

## APPENDIX E

Plaintiff's Exhibit 21

January 4, 1990

TO: The ALPA Hearing Board

Dear Member:

Transmitted herewith is a letter received from Captain C. H. Copeland regarding charges brought by the Eastern Airlines Master Executive Council against Captain John J. Bavis.

Sincerely,

/s/ John A. Dodge
John A. Dodge, Staff Coordinator
ALPA Hearing Board

JAD:ah

Enclosures

cc: L. D. Schulte
J. J. Bavis

---

TO: John Dodge
FROM: Skip Copeland
DATE: January 3, 1990

In response to a letter and conversation with Pat Murphy, the Article VIII charges are being faxed to you for dissemination to the Hearing Board. Please attach a copy of the original Letter of Charges.

Thank you,

---

Air Line Pilots Association
210 Madeira Avenue
Coral Gables, FL 33314
January 3, 1990

Capt. William A. Murphy, Chairman
ALPA Hearing Board
Air Line Pilots Association
1625 Massachusetts Ave., NW
Washington, D.C. 20036

Dear Captain Murphy:

I am in receipt of your letter of December 14, 1989, and received on December 19, 1989, requesting additional specific information in the matter of Capt. J.J. Bavis.

The EAL MEC became aware for the first time of possible premeditated previous misconduct of Capt. Bavis on September 9, 1989. This information came to the Eastern MEC in the form of a statement by an officer of the EAL MEC, and alleges that Capt. Bavis did, in violation of direction given by the EAL MEC, request, solicit, and participate in closed, or confidential meetings with certain members of management of Eastern Airlines Inc., and the Texas Air Corporation. Evidence indicates that these meetings, which were strictly prohibited by EAL MEC Resolution, took place and were participated in by J. Bavis during the EAL pre-strike period, the sympathy strike period and even after the recall of J. Bavis from the office of EAL MEC Master Chairman.

Statements, in the first person, exist that allege, but are not limited to, evidence that Capt. Bavis, intentionally and with premeditation, attempted to personally undermine the EAL ALPA sympathy strike for the purpose of promoting his personal agenda, hidden from knowledge of the EAL MEC. These premeditated transgressions were accomplished by J. Bavis in direct contradiction of the EAL MEC, and the membership, who had voted overwhelmingly in favor of continuing the strike activities and maintaining the integrity of the picket line thereby instilling confidence, as the resolve of the striking pilots continued to be demonstrated.

Evidence exists that Capt. Bavis did, on August 6, 1989, publicly advise the Eastern pilots to abandon their picket activities and to return to work at Eastern, accomplishing this traitorous act during a Council 18 Meeting to which the striking Eastern pilots were listening via a system wide audio transmission. This premeditated transgression was accomplished by J. Bavis without notice and in direct contradiction to a unanimous resolution of the EAL MEC which had been formerly adopted on August 5th at an MEC Meeting. This act was a clear violation of the ALPA Constitution and By Laws, Article VIII, Section 1A 1, 3 and 10.

Evidence exists that indicates that Capt. Bavis affected, or attempted to affect, through direct contact with EAL and/or Texas Air management, an agreement to return the pilots to work. This was accomplished without the advise or consent of the EAL MEC, its' officers and members. A properly constituted negotiating committee was in place, but was not utilized or consulted in these matters. This was in violation of direction of the EAL MEC and the ALPA Constitution and By Laws, Article VIII, Section 1A, 1, 3, 9 and 10.

Evidence exists that the actions of Capt. Bavis, during June, July and August, 1989 directly resulted in the destruction of the integrity of strike activities, mass defections of striking pilots to scab status, assisting and comforting Eastern and Texas Air management, and ultimately the failure of what was an extremely effective strike. These actions violated ALPA Constitution and By Laws Article VIII, Section 1A, 1, 3, 5 and 10.

Charges in accordance with the ALPA Constitution and By Laws were effected on December 5, 1989. Copies of said charges were properly transmitted to Capt. Bavis via certified mail on December 7, 1989. Receipt of the charges were acknowledge by Capt. Bavis on December 12, 1989.

The allegations set forth in those charges were filed in a timely manner in accordance with the ALPA Constitution and By Laws.

Sincerely,

/s/ C. H. Copeland
C. H. Copeland
Master Chairman, EAL MEC

Enc: Letter of Charges
Receipt for Certified Mail

cc: J. Bavis
L. Schulte
EAL MEC

[Receipt for Certified Mail Omitted In Printing]

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## APPENDIX F

[LOGO] POINT-TO-POINT [LOGO]

A Communication from the President of the Air Line PILOTS Association

Volume 2, Number 10 December 7, 1992

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* * *

### ALPA AND PRO-JUSTICIA: **Myths and Realities**

* * *

2. MYTH: The Eastern pilots relied on ALPA's promises in going out on strike and remaining on strike. The Eastern pilots did ALPA's dirty work by getting rid of Lorenzo and then ALPA abandoned them.

REALITY: The Eastern pilots decided to strike to take a stand against Frank Lorenzo, who was bleeding their airline. They felt they had no alternative. This was their decision, not ALPA's.

Consistent with APLA's structure of local autonomy with national resources and support, ALPA supported the decision of the Eastern pilots to strike. ALPA provided extraordinary levels of financial and manpower support to the Eastern strikers.

In August, 1989, ALPA National advised the Eastern pilots to go back to work to protect their jobs. The Eastern MEC, which had become dominated by those who are now the leaders of Pro-Justicia, refused to go back to work and stayed out until November, 1989. Nevertheless, ALPA National continued its support of the strike effort. When Eastern ceased operations, ALPA continued to fight for the Eastern pilots in bankruptcy court and federal court, in arbitration, and at the bargaining table, ALPA convinced NWA, USAir, and UAL to hire numerous EAL pilots, and negotiated a settlement with the Eastern estate which will result in significant monetary recovery for Eastern pilots.

* * *

## APPENDIX G

## EXHIBIT 1

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## THE SCABS OF EASTERN OF THE STRIKE OF '89

"WHAT A MAN IS SPEAKS SO LOUDLY,
THAT I CANNOT HEAR WHAT HE SAYS"

Emerson

"IT IS BETTER TO DIE WHILE
STANDING ON YOUR FEET
THAN
TO BE LIVING ON YOUR KNEES –"

Emilio Zapata

### ODE TO A SCAB

*After God had finished the rattlesnake, the toad, and the vampire, He had some awful substance left with which He made a SCAB. A SCAB is a two-legged animal with a cork-screw soul, a water-logged brain, and a combination backbone made of jelly and glue. Where others have hearts, he carries a tumor of rotten principles.*

*When a SCAB comes down the street, men turn their backs and angels weep in heaven, and the devil shuts the gates of hell to keep him out. No man has a right to SCAB as long as there is a pool of water deep enough to drown his body in, or a rope long enough to hang his carcass with. Judas Iscariot was a gentleman compared with a SCAB. For betraying his Master, he had character enough to hand himself. A SCAB HASN'T!*

*Esau sold his birthright for a mess of pottage. Judas Iscariot sold his Savior for thirty pieces of silver. Benedict Arnold sold his country for a promise of a commission in the British Army. The modern strike-breaker sells his birthright, his country, his wife, his children, and his fellow-men for an unfulfilled promise from his employer, trust or corporation.*

– *Jack London, 1915*

| NAME | ALPA# | EAL# |
|---|---|---|
| ABBOTT, GREGORY V. | | 72887 |
| ABER, L. ARLAND. | | 71307 |
| ACCARDO, PAUL A. | | 70909 |
| ACHILLE, JOSEPH M. | 254359 | 00167 |
| ADAMS, ALFRED M. | | 36349 |
| ADAMS, C.W. | 368209 | 00272 |
| ADAMS, JAMES B. | 757989 | 00335 |
| ADAMS, JOHN V. | | 37716 |
| ADAMS, KEITH J. | 762807 | 80347 |
| ADAMS, R.G. | 387183 | 00442 |
| AGOSTINO, ROBERT W. | | 51548 |
| AGUIAR, JONATHAN J. | | 20962 |
| AKAM, GLENN L. | | 87391 |
| AKBARYAR, BASMIR | | 17259 |
| AKKARACH, PRADIT | | 207775 |
| ALAVA, VICTOR P. | | 99594 |
| ALBRIGHT, ROBERT J. | | 88109 |
| ALBURY, C.D. | 089334 | 00750 |
| ALDRICH, WILLIAM H., III | | 43928 |
| ALEWINE, W.M. | 337766 | 00831 |
| ALEXANDER, HAROLD G. | | 99588 |
| ALEXANDER, MICHAEL W. | | 17260 |
| ALEXANDER, P.M. | 442251 | 01282 |
| ALEXANDER, THOMAS E. | | 64137 |
| ALEXANDER, WYATT H. | 269746 | 00867 |

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|---|---|---|
| ALFORD, JAMES W. | | 95120 |
| ALFORD, WAYNE L | | 99619 |
| ALLAN, GEORGE A. | | 20189 |
| ALLEN, C.D. | 327866 | 00987 |
| ALLEN, DENNIS | | 79711 |
| ALLEN, GERALD M. | | 17218 |
| ALLEN, R.P. | 383125 | 01040 |
| ALLEN, ROBERT J. | | 43463 |
| ALLEN, SCOTT D. | | 80349 |
| ALLEN, STEPHEN | | 79562 |
| ALLISON, DANIEL M. | | 83387 |
| ALMEYDA, EDUARDO J. | | 86730 |
| ALSBURY, DONALD E. | | 73069 |
| ALSUP, CLAUDE F. | 313379 | 1468 |
| ALVAREZ, J. | 529073 | 01484 |
| AMADOR, ROBERTO T. | | 99633 |
| AMEND, FRANK R., JR. | | 20781 |
| AMERICA, WILLIAM L. | | 64819 |
| AMERKAN, J. | 414193 | 01554 |
| AMINI, MEHDI | | 41981 |
| AMMONS, HENRY B. | 316091 | 1551 |
| ANDERSON, BRADLEY J. | | 20968 |
| ANDERSON, CHESTER P. | | 44041 |
| ANDERSON, DWIGHT D. | 693325 | 01942 |
| ANDERSON, J.J. | 450023 | 06442 |
| ANDERSON, NORMAN F. | | 29624 |
| ANDERSON, ROBERT W. | | 64119 |
| ANDERSON, RONALD R. | | 72730 |
| ANDRAOS, JOSEPH C. | | 99603 |
| ANDREWS, GEORGE, JR. | 353086 | 01672 |
| ANDREWS, ROBERT E. | 344341 | 01841 |
| ANDRUS, KENNETH L. | | 44040 |
| ANGELETTI, T.J. | 402198 | 02089 |
| ANGEL, WALTER H. | | 20974 |
| ANGLEMYER, RICHARD M. | | 15670 |
| ANGLIN, CHARLES D. | 310151 | 01824 |
| ANTCZAK, ART A. | 295626 | 02178 |

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|---|---|---|
| APFELBERG, R. | 140186 | 02188 |
| ARGUEZ, RICHARD A. | | 67626 |
| ARNOT, BRIAN A. | | 15672 |
| ARONOFF, MELVIN | | 71535 |
| ARONOFF, MICHAEL B. | | 21000 |
| ASEFI, ABDUL S. | | 99466 |
| ASHBROOK, LARRY J. | | 72919 |
| ASHCRAFT, BOYD L. | 447342 | 00108 |
| ASHLEY, G.M. | 530493 | 02704 |
| ATTERBURY, WILLIAM M. | 643890 | 02823 |
| AURINGER, R.L. | 376624 | 02905 |
| AUTRY, JERRY S. | | 17405 |
| AUZINE, STEVEN M. | | 44037 |
| AYSLWORTH, WILLIAM E. | 333096 | 03051 |
| AZAD, RAJA M. | | 40110 |
| BABAYAN, MUSTAFA G. | | 20717 |
| BACHRACH, MICHAEL S. | | 81900 |
| BAGLEY, GARY D. | | 72731 |
| BAHR, DONALD J. | | 43465 |
| BAILEY, RICHARD D. | 326827 | 3268 |
| BAIRD, CHARLES E. | | 20782 |
| BAKER, MICHAEL J. | | 93727 |
| BAKER, MICHAEL G. | | 37717 |
| BAKER, ROBERT L. | 351759 | 03487 |
| BALBIN, SERGIO | | 71545 |
| BALDONI, LUIS A. | 248815 | 01285 |
| BALDRIDGE, J.H. | 338384 | 03633 |
| BALDWIN, RICHARD L. | | 86729 |
| BALL, FREDERICK W. | | 79511 |
| BALL, GREGORY | | 52594 |
| BAQUE, FRANK | 438465 | 04312 |
| BARBER, FRANCIS M. | 338392 | 04027 |
| BARGE, PATRICK S. | 574871 | 04050 |
| BARKER, WILLIAM H. | 357723 | 04014 |
| BARNES, GREGORY R. | | 46487 |
| BARNES, HERMAN BRYANT | | 88110 |
| BARNES, WILLIAM H. | 315010 | 04007 |

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|---|---|---|
| BARR, DAVID J. | | 71538 |
| BARRERO, FRANCISCO E. | | 21007 |
| BARRETO, PETE | 228387 | 01287 |
| BARRIOS, J.V. | 451740 | 07842 |
| BARRY, T.G. | 108886 | 04056 |
| BARTLETT, DAVID R. | 434084 | 04299 |
| BARTLETT, LINDA B. | | 04313 |
| BARTON, THEODORE W. | | 88927 |
| BASCO, JOSEPH F. | 742163 | 04608 |
| BASILE, ROBERT | | 80137 |
| BASINSKI, MICHAEL J. | | 84255 |
| BASS, WAYLON T. | 338400 | 4639 |
| BASTIAN, ARTHUR L. | | 20973 |
| BATSON, WESLEY E. | 756007 | 04716 |
| BAUCH, JIM H. | 358838 | 04741 |
| BAUMAN, RICHARD L. | | 69236 |
| BAUMAN, ROBERT F. | 533794 | 04785 |
| BAXTER, GLEN W. | | 56823 |
| BAY, PHILIP E. | | 79110 |
| BAZAR, WILLIAM A. | | 79563 |
| BEACH, BURTON E. | 189910 | 04991 |
| BREACHLER, MICHAEL M. | | 20963 |
| BEACH, S.R., JR. | 349837 | 04989 |
| BEARD, R.E. | 321901 | 05026 |
| BEATTIE, DONALD G. | 442376 | 06187 |
| BEATY, GREGORY L. | | 69235 |
| BEAVERS, JAMES L., III | | 40108 |
| BECKER, DONALD A. | | 65185 |
| BECK, WOODROW W., JR. | 373613 | 05131 |
| BEELER, CRAIG A. | 422766 | 05280 |
| BEELS, ROBERT L. | 348219 | 05282 |
| BEER, L.B. | 525303 | 05296 |
| BEER, WILLIAM G. | 342501 | 05284 |
| BEGLAN, JOHN L. | 189464 | 05338 |
| BEHR, PETER J. | 237537 | 05346 |
| BELEMA, R.H. | 455527 | 09013 |
| BELL, D.A. | 373605 | 05456 |

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|---|---|---|
| BELL, LARRY | | 79560 |
| BELLMAN, RICHARD L. | | |
| BELL, STILLMAN A. | 081927 | 05378 |
| BELL, THOMAS A. | | 97497 |
| BELMAN, LARRY J. | 446047 | 06928 |
| BELMA, RICHARD T. | | 87158 |
| BELTRAN, JORGE E. | | 59204 |
| BENECKE, KEVIN | | 73070 |
| BENNETT, BRYAN L. | | 70653 |
| BENSON, ROBBIE B | | 77810 |
| BENTLEY, WILLIAM C. | | 38364 |
| BERGER, HOWARD T. | 301689 | 05889 |
| BERGHANE, D.A. | 446088 | 06890 |
| BERG, JACK F. | 195594 | 05883 |
| BERGSTEIN, DAVID S. | | 80344 |
| BERGSTROM, STEVE Y. | 453688 | 08894 |
| BERKE, RICHARD A. | | 71390 |
| BERNET, ALLEN L. | | 45877 |
| BERRY, ALAN L. | | 83397 |
| BERRYMAN, LARRY W. | 388199 | 06022 |
| BERWALD, ERIC K. | | 29630 |
| BERWICK, TIMOTHY N. | 440834 | 6061 |
| BETZ, HANSJOERG R. | | 45878 |
| BHIM-RAO, JOHN | | 20965 |
| BIALKO, P.J. | 355081 | 06200 |
| BICHAN, B.G. | 336826 | 06213 |
| BIEBERSTEIN, JOHN R. | 267609 | 06253 |
| BIENIEK, CLARANCE R. | | 64825 |
| BIGGS, CLIFFORD G. | | 69190 |
| BIRCHWOOD, ESLIE S. | 745364 | 83388 |
| BIRMINGHAM, JAMES D. | | 17397 |
| BISGNANO, CHARLES R. | 358820 | 06459 |
| BJELKEVIG, RICHY A. | | 37248 |
| BJELLOS, DAVID M. | 624585 | 06592 |
| BJORK, R.J. | 304931 | 06626 |
| BLANCHARD, ALBERT J. | | 40121 |
| BLANKESHIP, OTIS T. | 263269 | 06793 |

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| BLANKESHIP, JOSEPH D. | | 58989 |
| BLAU, ROBERT B. | | 23605 |
| BLELLOCH, DAVID J. | | 15666 |
| BLESSING, PETER E | 510933 | 6950 |
| BLIGHT, GERALD L. | | 37253 |
| BLIZ, VICTOR E. | 367813 | 06968 |
| BOCKSTEIN, STEVE M. | 847350 | 46486 |
| BOHANNON, DAVID W. | | 68209 |
| BOISVERT, DONALD M. | | 83389 |
| BOLLINGER, FRED, JR. | 221226 | 07414 |
| BOLLWEG, GEORGE M. | | 59209 |
| BOMMA, FRANK | 224626 | 07580 |
| BOOHER, MARK A. | | 83390 |
| BOONE, DUDLEY W. | 449629 | 07844 |
| BORGEN, IVON A. | | 29627 |
| BORMANN, DAVID J. | | 21002 |
| BORSUM, L.J. | 329011 | 07775 |
| BORTH, JOHN E. | | 15668 |
| BOSCHERT, ELMER J. | | 41609 |
| BOTTOMS, WILLIAM C. | | 40111 |
| BOUCHE, ADRIAN M. | | 26258 |
| BOWDEN, THOMAS A. | | 83348 |
| BOWEN, PHILLIP K. | | 86359 |
| BOWLER, ROLAND K. | 281170 | 08190 |
| BOW, RICHARD L. | | 83464 |
| BOWSER, A.L. | 342493 | 08194 |
| BOYIAN, ARCHIE | | 64138 |
| BOYKIN, FRANK W. | | 71540 |
| BOZZY, E.P. | 231506 | 08559 |
| BRADLEY, RODERICK | | 99585 |
| BRAMMAM, P.R. | 358531 | 08779 |
| BRANAM, EDDIZ L. | 746917 | 08810 |
| BRANDT, W.M. | 434381 | 08834 |
| BRATRUD, ED K. | | 15669 |
| BRAUM, RAINER H. | | 99621 |
| BRAUM, ROBERT L. | | 78820 |
| BRAY, LEE E. | 311548 | 08989 |

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| BRAYTON, SCOTT R. | | 79525 |
| BREAKFIELD, JOHN E. | | 80345 |
| BREDTHAUER, DIRK | | 86723 |
| BRICENO, ANTHONY S. | | 95121 |
| BRIDGES, J.D. | 395350 | 09325 |
| BRIER, JOHN A. | | 93898 |
| BRIGGS, PAUL R. | | 99629 |
| BRIGHT, SAMUEL W. | 300368 | 09335 |
| BRILEY, PAXTON M. | 348672 | 09299 |
| BRINKER, J.R. | 322024 | 09269 |
| BRISCOE, ODIE, JR. | 644179 | 9351 |
| BRITTAIN, DOUGLAS P. | | 20966 |
| BRITTIN, R.E. (BOB) | 349795 | 09367 |
| BRITZIUS, ED K. | 287144 | 09373 |
| BROOKE, MELVIN L. | | 71311 |
| BROOKS, D.L. | | 76009 |
| BROWN, ALVIN M. | | 45881 |
| BROWN, BOYCE | 225854 | 09763 |
| BROWN, C.A. | 453712 | 08903 |
| BROWNE, CARLTON | | 67879 |
| BROWN, EDWARD M. | | 67742 |
| BROWN, HERB | | |
| BROWNIE, MARK S. | | 20712 |
| BROWNING, DAVID L. | 446021 | 07182 |
| BROWN, KIMBERLY | | 20718 |
| BROWN, RICHARD L. | | 09888 |
| BROWN, ROBERT L. | | 79226 |
| BROWN, ROLAND O., JR. | | 80346 |
| BROWN, RONALD B. | | 17557 |
| BROWN, WALTER R., JR. | | 45884 |
| BRUDER, JAMES A. | | 83391 |
| BRUNDAGE, G.H., JR. | 353763 | 10415 |
| BRYANT, CHARLES C. | | 45050 |
| BRYANT, PAUL T. | | 87500 |
| BRYANT, WARD C. | 277830 | 10608 |
| BUCHANAN, EDWARD J. | | 15881 |
| BUCHANAN, M.E. | 455543 | 10749 |

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| BUCHANAN, T.E. | 333534 | 10659 |
| BUEHLER, LAWRENCE J. | | 36519 |
| BUETER, T.M. | 333526 | 10827 |
| BUMPS, WILLIAM R. | | 93735 |
| BUNDRANT, WILLIAM D. | 351502 | 10959 |
| BUNTIN, E.S., JR. | 187260 | 10973 |
| BURCH, HAROLD R. | | 51551 |
| BURGGRAAF, DONALD K. | | 99623 |
| BURKE, C.R. | 238840 | 11069 |
| BURKE, K. | | 41891 |
| BURKE, JAMES P. | 433060 | 11330 |
| BURKE, MURRAY E. | 184432 | 11189 |
| BURKE, T.W. | 277046 | 11079 |
| BURKE, TIMOTHY E. | 590026 | 11187 |
| BURKHART, RONNIE L. | | 29617 |
| BURLACE, TOM J. | 174375 | 11152 |
| BURN, CHARLES | | |
| BURNS, CHARLES E. | | 21003 |
| BURNS, DAVID A. | | 17212 |
| BURNSIDE, HOBERT S. | | 91708 |
| BURNS, JAMES J. | 804997 | 11321 |
| BURRELL, PAUL | | 83393 |
| BURTON, KEITH H. | | 69188 |
| BURT, PAUL B | | 88103 |
| BUSSEY, WILLIE C. | 221622 | 11509 |
| BUTLER, DAVE S. | 455535 | 11720 |
| BUTTARS, MICHAEL L. | | 17402 |
| BUTTION, THOMAS R. | 102442 | 11707 |
| BUTTRAM, PHILIP | | 78819 |
| BUTTS, RONALD G. | | 79717 |
| BUSINSKI, RICHARD F. | 234344 | 11767 |
| BYERS, BRUCE W. | 292599 | 11787 |
| CABRERA, FRANCISCO E | | 670 |
| CAIRNES, CARROLL B. | 264242 | 12001 |
| CAISON, STEPHEN E. | | 20969 |
| CALANTROPIO, MICHAEL | | 41611 |
| CALCAGNO, MARIO F. | | 64107 |

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| CALDWELL, GLENN T. | | 46681 |
| CALDWELL, QUINTON M. | 440206 | 12147 |
| CALHOUN, LELAND | | 79724 |
| CALLAHAN, ROBERT E. | | 93899 |
| CAMPBELL, C.E. | 381558 | 12330 |
| CAMPBELL, CARLTON C. | | 72171 |
| CAMPBELL, JAMES G. | | 57284 |
| CANADAY, DONALD F. | | 20970 |
| CANFIELD, THOMAS H., II | | 17222 |
| CANTRELL, WILLIAM L. | | 88105 |
| CAPOW, RICHARD E. | 329045 | 12717 |
| CARCAS, CARLOS N. | | 97110 |
| CARE, JAMES D. | 312561 | 12754 |
| CARL, G.L. | 279034 | 12763 |
| CARLSON, BRUCE E. | 294363 | 12782 |
| CARLSON, DAVID E. | | 80342 |
| CARNS, RONALD G. | | 17403 |
| CARON, KELLY J. | 679696 | 13011 |
| CARPENTER, MICHAEL S. | 338020 | 13076 |
| CARRERAS, CECIL J. | | 17223 |
| CARRINGTON, PAUL E. | | 29619 |
| CARR, RICHARD E. | | 43408 |
| CARR, THOMAS U. | 242271 | 12862 |
| CARTENSEN, AL M. | 228056 | 13087 |
| CARTER, BRIAN C. | | 59201 |
| CARTER, BRUCE R. | | 71537 |
| CARTWRIGHT, J | 442400 | 12632 |
| CARTWRIGHT, GARY A. | | 73368 |
| CASANOVA, JOSEPH E. | | 83394 |
| CASE, RICHARD E. | | 86726 |
| CASHATT, RICHARD E., JR. | | 93892 |
| CASIMIR, CHRISTY R. | | 99468 |
| CASTILLO, JAMES G. | | 88108 |
| CASSTRILLO, ANTON | | 64128 |
| CASTROMOVER, J.F., JR. | | 17608 |
| CATCHINGS, DOUGLAS S. | | 69186 |
| CAUBLE, ROGER L. | | 64129 |

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| CAUSEY, F.A., JR. | 239699 | 13940 |
| CAYLOR, ROBERT M. | | 95720 |
| CERRI, MAURIZIO C. | | 83395 |
| CHABOT, A.L., JR. | 192963 | 14123 |
| CHADWICK, C.R. | 449678 | 14334 |
| CHAILLE, BRUCE F. | 545673 | 14125 |
| CHAMBERLIN, LEONARD | | 20971 |
| CHAMPAGNE, CARL | 449702 | 13966 |
| CHAMPION, JOSEPH | | 73295 |
| CHANCEY, JOHN W. | | 69189 |
| CHANDLER, JAMES W. | | 51948 |
| CHAPMAN, ARTHUR C. | 395343 | 14239 |
| CHAPO, JIM E. | 295873 | 14190 |
| CHAPPELL, K.A. | 294488 | 14096 |
| CHARNNES, JONATHAN E. | | 44036 |
| CHEEK, RAY T | 165282 | 14503 |
| CHENEY, STEPHEN L. | 403394 | 13797 |
| CHILDS, ROBERT W. | | 20927 |
| CHIPRANY, THOMAS A. | | 99470 |
| CHIRINO, RAPHAEL E. | 441626 | 14754 |
| CHITTICK, MICHAEL L. | | 52593 |
| CHMURA, JEFFERY | | 95122 |
| CHORNOCK, BRUCE M. | | 41975 |
| CHRISTENSEN, HAROLD M. | 379115 | 14822 |
| CHRISTOPHER, ANTHONY S. | | 99639 |
| CHRISTOPHER, M.A. | 338426 | 14846 |
| CHUBALASHVILI, DAVID M. | | 88931 |
| CHURCH, DAVID E. | | 99599 |
| CHURCH, G.M. | 758920 | 15131 |
| CIEPLIK, TED K. | 79898 | |
| CIOMMO, WILLIAM J. | | 45054 |
| CIRROTTI, D.J. | 373597 | 14964 |
| CITRANO, MICHAEL A. | 354365 | 14945 |
| CLAPP, KENNETH M. | | 99473 |
| CLARK, BOB | | |
| CLARK, DOUG E. | 164335 | 15047 |
| CLARK, EDWARD T. | | 69185 |

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| CLARK, FRANCIS X. | 528729 | 15240 |
| CLARK, JOSEPH | | 51726 |
| CLARK, JR, GILES | | 60239 |
| CLARK, WESLEY C. | | 79745 |
| CLARY, BONNIE K. | | 67889 |
| CLARY, MICHAEL R. | 30891 | |
| CLAYTON, TODD P. | 612671 | 15318 |
| CLAYTON, WILLIAM, III | 449769 | 15347 |
| CLEMANS, MICHAEL C. | | 57285 |
| CLEM, CLYDE | 441162 | 15480 |
| CLEMENCE, A.M. | 353771 | 15481 |
| CLEMENTS, F. PETER, JR. | 436238 | 15502 |
| CLEMMONS, THOMAS E., JR. | | 99600 |
| CLENDENEN, WILLIAM M. | 741645 | 95717 |
| CLEVELAND, WILLIAM L. | 168781 | 15496 |
| CLOUTIER, RAYMOND D. | | 99601 |
| CLUBB, RUSS | | 98488 |
| COBB, J W | | 15938 |
| COBB, KENNY D. | | 41614 |
| COBLE, D.R. | 234419 | 15957 |
| COCKEY, ROBERT M. | 750174 | 57286 |
| COCKRELL, GARY A. | | 83396 |
| COCUSO, DAVID J. | 446112 | 15993 |
| COE, GARY | | 79526 |
| COE, GEOFFREY B. | 609958 | 16072 |
| COLE, J.D. | 436956 | 16150 |
| COLEMAN, D.L. | 431510 | 16259 |
| COLE, MAX W. | | 51580 |
| COLE, W.F. | 346445 | 16315 |
| COLLIER, W.R. | 344242 | 16017 |
| COLLI, GUIDO | 541078 | 16264 |
| COLLINS, WILLIAM D. | | 79746 |
| COLTON, CRAIG S. | | 93729 |
| COMEAU, ALLEN R. | | 38367 |
| COMMANDER, JOHN B. | 440230 | 16776 |
| COMMEN, NIMAN | | 50286 |
| COMPTON, J.P. | 612325 | 16763 |

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| CONDER, WILEY E. | 200568 | 16828 |
| CONDON, ROBERT L. | 337006 | 16834 |
| CONFALONE, JAMES G. | 271833 | 16829 |
| CONNELL, EARLE W. | | 16881 |
| CONNELLY, P.A. | 235853 | 16897 |
| CONNOR, EDWARD H. | | 30907 |
| CONSER, ROBERT W. | 300921 | 16997 |
| CONSTANTINI, JOHN J. | | 17992 |
| CONTI, REGIS G. | | 69183 |
| CONVERSE, WESLEY G. | | 30908 |
| CONWAY, JAMES M. | | 99630 |
| COOK, CARL D. (DON) | 320267 | 17178 |
| COOK, K.E. | 463000 | 17231 |
| COOK, MICHAEL F. | | 40109 |
| COOK, RICHARD E. | | 57287 |
| COOPER, T.L. | 227199 | 17392 |
| COOPER, WILLIAM W | | 87393 |
| COPPINGER, THOMAS | | 79561 |
| CORBIN, DONALD W. | | 41618 |
| CORBITT, JACKIE D. | 299784 | 17742 |
| CORREA, L.C. | | 57288 |
| CORREARD, RONALD G. | 237578 | 17798 |
| CORREA, WILLIAM DAVID | | 81895 |
| CORTES, MARIO T. | 224840 | 17886 |
| CONSTANTINI, JOHN | | 17993 |
| COTTER, STEPHEN B. | 449736 | 17974 |
| COTTLE, CLARENCE R. | | 83463 |
| COTTRELL, ALTON W. | | 30910 |
| COUBAN, ROBERT S. | 316414 | 18016 |
| COURTRIGHT, DENNIS E. | | 38368 |
| COVAULT, L.E. | 238725 | 18129 |
| COWART, DAVID A. | | 51563 |
| COWART, JOHN A. | 437426 | 18200 |
| COWELL, HOWARD R. | | 95721 |
| COWEN, J.R. | 410266 | 18199 |
| COX, GLENN R. | | 20997 |
| COXHEAD, PETER C. | 231977 | 18390 |

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| COX, L.G. | 190306 | 18289 |
| COX, RODNEY B. | 345371 | 18319 |
| CRAFTON, MELVIN L. | | 70086 |
| CRANE, WENDELL E. | 377671 | 18499 |
| CRAUS, CLIFF M. | | 52595 |
| CRAWFORD, D.B. | 455493 | 18551 |
| CRAWFORD, JAMES H., JR. | 329904 | 18471 |
| CRAWFORD, P.A. | 438150 | 18541 |
| CREDNO, FRED | | 41239 |
| CREEL, RAYMOND L. | | 95123 |
| CREPPEL, JAQUES J. | | 20188 |
| CRISS, DANIEL R. | 642280 | 18887 |
| CRISTNA, C. | | 79113 |
| CROCKER, C.E. | | 79113 |
| CROSBY, DENNIS L. | 649731 | 19026 |
| CROW, K.P. | 383810 | 19080 |
| CROW, RICHARD D. | | 72305 |
| CROWTHER, BLAINE E | 612333 | 18974 |
| CRUNKLETON, JAMES A. | 349753 | 19271 |
| CRUSH, J.M. | 434639 | 19260 |
| CRUZ, LUIS | | |
| CULLIMORE, MICHAEL D. | | 99602 |
| CULLINGFORD, GLENN T. | | 20191 |
| CUMMINGS, ROBERT C., JR | 315994 | 19397 |
| CUNNINGHAM, KENNETH R. | | 43925 |
| CURRAN, T.R. | 392233 | 19502 |
| CURRENT, MICHAEL E. | | 70095 |
| CURTI, R. | 211417 | 19516 |
| CURTIS, EDWARD M. | 329110 | 19547 |
| CUTRER, JERRY P. | 449694 | 19671 |
| CYPHERS, MARK J. | | 56822 |
| CZEPIEL, KENNETH J. | | 81899 |
| D'AMBROSIO, JAMES A. | | 64130 |
| D'ANTONIO, JOSEPH J. | | 71303 |
| DAILI, NADER | | 71100 |
| DALRYMPLE, DAVID P. | | 70072 |
| DANIELS, LEWIS A. | 333005 | 20071 |

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| DANSKIN, KEITH M. | 433953 | 20115 |
| DARLING, PATRICK | | 87390 |
| DASTRANJ, MEHDI S. | | 23613 |
| DAVIDSON, DON JR | | 17610 |
| DAVIDSON, DONALD C. | 238246 | 20358 |
| DAVIDSON, KENNETH B. | | 36369 |
| DAVIDSON, WILLIAM | 449785 | 20650 |
| DAVIS, ALFRED | | 79524 |
| DAVIS, G.O. | 508267 | 20434 |
| DAVIS, N.G., JR. | 446195 | 20658 |
| DAVIS, HENRY C., II | | 44042 |
| DAVIS, JOHN E. | 231530 | 20522 |
| DAVIS, LEROY L. | | 23615 |
| DAVISON, DAVID J. | | 71101 |
| DAVIS, STEPHEN A. | | 40120 |
| DAVIS, WILLIAM R. | 353136 | 20597 |
| DAVOUST, WILLIAM P. | | 34541 |
| DAWKINS, C.R. | 269670 | 21064 |
| DAWSON, WARD R. | | 20998 |
| DAY, DENNIS A. | | 20999 |
| DEARMAN, B.C. | 229583 | 21293 |
| DECKER, CHRISTIAN F. | 434399 | 21463 |
| DECKER, GEORGE E. | | 69184 |
| DEEG, RAYMOND J. . | 231480 | 21495 |
| DEFOSTER, GARY A. | | 44043 |
| DELARIA, DAVID J. | 384487 | 22067 |
| DELIA, ALBERTO | | 97115 |
| DELIERE, R.C. | 168658 | 21679 |
| DELISLE, ALCIDE H. | 437384 | 22062 |
| DELORENZO, PAUL A. | 661983 | 86727 |
| DEMARET, R.J. | 321976 | 21716 |
| DEMING, M.A. | 229500 | 21754 |
| DENIKE, JAMES J. | | 40122 |
| DENISON, RICHARD D. | | 95725 |
| DENNIS, FRED | | 21825 |
| DENNISON, ROBERT R. | | 89780 |
| DEPALMA, TED V. | 648709 | 23030 |

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| DEPHILLIPS, FLOYD M. | | 97109 |
| DERBY, JACK A. | 408963 | 21862 |
| DERMISH, A.M. | | 71305 |
| DESCHLER, HANS P. | | 34544 |
| DESPRADEL, LUIS K. | | 71102 |
| DEVEREAUX, J.A. | 356550 | 21973 |
| DEVISSER, ADRIAN T. | | 72309 |
| DEWITT, WELDON G. | | 95718 |
| DENSNUP, PAUL W. | 395251 | 22060 |
| DIACHUK, WALTER O. | | 71544 |
| DIBICCARI, DONALD | 329920 | 22204 |
| DICKINSON, RANDALL L. | | 34552 |
| DICKMAN, GEORGE | 438309 | 22266 |
| DIENER, RANDALL A. | | 56824 |
| DILLMAN, DONALD F. | 187617 | 22439 |
| DILLON, JAMES E. | 585729 | 22303 |
| DILORENSO, RAYMOND G. | | 71103 |
| DION, JOSEPH F. | | 44044 |
| DISILVESTRO, ANTHONY R | 661868 | 22637 |
| DIXON, CARROLL W. | 405274 | 22644 |
| DIXON, HOWIE (H.V.) | 188821 | 22661 |
| DIZ, DAN D. | | 41237 |
| DOBSON, GORDON W. | 927517 | 22707 |
| DOERR, ROBERT | | 70046 |
| DOGLIONE, FRANK H. | 770479 | 41580 |
| DOLAN, E.T. | 224139 | 22863 |
| DOMINGUEZ, RAUL E. | | 71104 |
| DONAHUE, C.P. | 367789 | 22923 |
| DONGES, LINDSEY D. | | 15661 |
| DONNELSON, RANDY D. | | 37715 |
| DONOHUE, R.A. | 221630 | 23003 |
| DONAVAN, MICHAEL F. | 319657 | 22983 |
| DORAN, BENNY R. | 329763 | 23101 |
| DOROUGH, THOMAS A. | | 56825 |
| DOUGHERTY, RALPH A. | 529248 | 23261 |
| DREWES, BILL R. | 326819 | 23565 |
| DREWS, ROYAL A. | | 21001 |

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| DUBEAU, KURT W. | | 20714 |
| DUCK, VERNON R. | 223925 | 23714 |
| DUCKWORTH, T.O. | 392662 | 23726 |
| DUFF, MICHAEL L. | | 56826 |
| DUKE, STANLEY D. | 120782 | 23793 |
| DUKIET, W.W. | 446187 | 23825 |
| DULANY, ROBERT O. | | 17558 |
| DUMLER, MARLIN A. | | 89781 |
| DUNCAN, DONALD W. | | 72183 |
| DUNDAS, C.P. | 297796 | 23997 |
| DUNLAP, W.C. | 329144 | 24072 |
| DUNMIRE, NIEL E. | 354001 | 24066 |
| DUNN, JOHN H. | 436444 | 24114 |
| DUNN, LARRY J. | 433086 | 24113 |
| DUNN, R.A. | 609560 | 24124 |
| DUNTON, JOHN M. | | 20964 |
| DURAND, WILLIAM H., III | | 32424 |
| DURANTE, JOHN P. | 218651 | 24258 |
| DUREPO, GARY A. | | 15665 |
| DURIKA, JOHN P. | | 97121 |
| DURKIN, GREGORY P. | | 97112 |
| DUSANG, WILLIAM S. | 242511 | 24356 |
| DYLONG, JOSEPH | 234534 | 24450 |
| EALY, ROBERT L. | | 34542 |
| EARL, ROBERT N. | 433102 | 24698 |
| EASTMAN, JERRY D. | 228288 | 24547 |
| EBERHART, MATTHEW M | | 32426 |
| EBSTEIN, LARRY | | 86140 |
| ECKERT, CHARLES R. | | 57289 |
| ECKHART, HOWARD S. | | 99605 |
| ECKLEY, JOHN A. | | 99597 |
| EDELEN, D.B. | 437863 | 24703 |
| EDLING, LEON K. | | 24731 |
| EDWARDS, HARELL R. | | 26260 |
| EDWARDS, KENNETH A. | 536656 | 24794 |
| EGGE, KENNETH L. | 328047 | 24921 |
| EGUT, RONALD S. | 636423 | 24938 |

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| EHAD, W.I. | | 17410 |
| ELDRIDGE, T. | 297804 | 25055 |
| ELFORD, J.P. | | 34543 |
| ELKINS, JERRY R. | 869974 | 51584 |
| ELLASON, DON T. | 632638 | 25121 |
| ELLIOT, A.M. | 246132 | 25190 |
| ELLIOT, E.B. | 541912 | 25134 |
| ELLIOTT, R. | | 73296 |
| ELLIS, JAMES R., JR. | 360008 | 25315 |
| ELMDAMAT, ROBERT | | 81993 |
| ELMORE, ALBERT R. | | 44039 |
| EMERY, J.C., JR. | 446229 | 25477 |
| ENGELKE, WARREN L. | 392241 | 25544 |
| ENGGREN, DONN | | 51587 |
| ENGLISH, GARY M. | | 79731 |
| ERDMAN, T.G. | 224659 | 25705 |
| ERICKSON, ALAN | 435545 | 25753 |
| ERICKSON, JOHN A. | | 20776 |
| ERVIN, SILVA | | |
| ESCOBAR, ALFONSO | | 79729 |
| ESPINOSA, CARLOS N. | | 44045 |
| ESTES, GARY L. | | 41895 |
| EVANS, DAVID L. | 528778 | 25952 |
| EVANS, HARRY | | 73297 |
| EVANS, RICHARD N. | 767210 | 26021 |
| FAGAN, T.E. | 434522 | 26383 |
| FAHN, CHARLES L. | 434860 | 26554 |
| FAIRWEATHER, HAROLD W. | | 97111 |
| FALCOM, RICARDO A. | | 57290 |
| FALLAVOLLITA, SAL | 245274 | 26398 |
| FANT, GLENN E., JR. | | 72490 |
| FARBOLIN, GREGORY J. | | 34545 |
| FARENGA, JACK M. | 609578 | 26420 |
| FARMER, MICHAEL | | 51604 |
| FARNSWORTH, EARNEST L. | 456434 | 26582 |
| FARNSWORTH, MICHAEL H. | 782185 | 41892 |
| FARRELL, RICHARD L. | 441634 | 26550 |

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| FATOLAHI, ARJANG | | 84258 |
| FAULKNER, CLAY | 277062 | 26627 |
| FAY, T.L. | 453779 | 26671 |
| FEGGESTAD, D.R. | 241083 | 26753 |
| FELIU, J.E. | 443747 | 26811 |
| FENDERLANDER, W.G. | 353219 | 26853 |
| FENNELL, G.W. | 528786 | 26891 |
| FERNANDES, FRANCIS | | 83466 |
| FERREIRA, GRANT M. | | 37710 |
| FERTE, GERALD | 227397 | 27033 |
| FETZER, LESTER E. | 242495 | 27137 |
| FICAJ, ALEXANDER B. | | 34546 |
| FICKLEN, JOHN D., III | 384826 | 27155 |
| FILLER, R.E. | 312900 | 27221 |
| FINK, GARY L. | | 37720 |
| FINLEY, JOHN A. | | 99641 |
| FISCUS, MIKE | | 51946 |
| FISHER, D. ROSS | | 24175 |
| FISHER, JOEL F. | 231886 | 27461 |
| FISHER, JOEL, IV | 686881 | 27490 |
| FITZGERALD, JOHN H. | 372847 | 27585 |
| FITZGERALD, SEAN L. | | 99580 |
| FLEISHMAN, JOHN C. | 333476 | 27735 |
| FLETCHER, RONALD A. | 632125 | 27771 |
| FLOOD, CLIFF B. | 132928 | 27866 |
| FLORENCE, WALTER A. | | 83346 |
| FLYNN, R.W. | 644237 | 27997 |
| FOLEY, W. TERRY | | 68212 |
| FONG, GERALD W. | 503896 | 28043 |
| FONTANA, DWIGHT J. | | 57291 |
| FORAKER, THOMAS W. | | 69353 |
| FORD, ALLEN R. | | 68210 |
| FORD, BERNARD C. | | 21004 |
| FORESTO, JOE M. | | 17412 |
| FORGEY, RICHARD C. | | 87505 |
| FORMAN, B.D. | 346718 | 28364 |
| FORMAN, ERROL D | 414235 | 28370 |

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| FORMAN, JAMES D. | | 21005 |
| FORREST, DOUGLAS W. | 442459 | 28448 |
| FORSBERG, SCOTT A. | | 83467 |
| FOSS, EDWARD L. | 329169 | 28572 |
| FOSTER, DEWEY D., JR. | 279018 | 28588 |
| FOSTER, J.V. | 277814 | 28605 |
| FOSTER, KERRY | 329177 | 28618 |
| FOSTER, ROBERT W. | 400390 | 28564 |
| FOTHERGILL, T.A. | 242487 | 28677 |
| FOWELLS, J.E. | 281162 | 28767 |
| FOWLER, GERALD J. | | 29629 |
| FOX, EDWIN C. | | 46538 |
| FOX, JEFFERY C. | | 86142 |
| FRAIOLI, GERALD | 412445 | 28903 |
| FRANCE, JEFFERY A. | | 99604 |
| FRANCIS, BRUCE | | 79710 |
| FRANCIS, R.M. | 902403 | 28899 |
| FRATER, KEVIN X. | | 21006 |
| FRAZEE, ALLAN R. | | 64131 |
| FRAZIER, B.W. | 418525 | 29091 |
| FRAZIER, DAVID R. | | 93726 |
| FREDRICK, PAUL E. | 334755 | 29173 |
| FREED, PHILIP P. | 368381 | 29213 |
| FRENCH, GUY B. | | 65182 |
| FRENCH, JERRY L. | | 44046 |
| FRETS, GLYNN | 346353 | 29291 |
| FREUND, R., III | | 41240 |
| FREY, SEWELL L | 440784 | 29351 |
| FREYTES, LUIS R. | 225060 | 29077 |
| FRICK, ROBERT A. | 185900 | 29471 |
| FRIED, STEVEN I. | | 46545 |
| FRITCH, DONALD A. | 376681 | 29466 |
| FRITTS, DALE | | |
| FROST, WAYNE BENJAMIN | | 20710 |
| FRYE, CARL W. | 134676 | 29646 |
| FRYE, JAMES M. | | 58990 |
| FRYE, TIMOTHY P. | 653253 | 29447 |

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| FRYLING, ALBERT A. | 287839 | 29651 |
| FRY, ROLAND J. | 353177 | 29631 |
| FUCHS, JOHN A. | 355669 | 29657 |
| FUGEDY, JOHN J. | | 37721 |
| FULLER, ESTAN L. | 184317 | 29750 |
| FULLER, FRANCIS J. | | 97113 |
| FULLER, JAMES D. | 433532 | 29748 |
| FULTON, ROBERT G. | | 43455 |
| FUTTERMAN, MICHAEL L. | 238139 | 30001 |
| GABBARD, CHARLES C. | | 30892 |
| GAEDTKE, M.L. | | 41897 |
| GAFFNEY, EDWARD P. | 210559 | 30088 |
| GALANTE, ANTHONY J. | 309153 | 30164 |
| GALLAGHER, MATTHEW M. | 521450 | 30180 |
| GALLOWAY, DWAYNE D. | | 99476 |
| GALLOWAY, FRANK D. | | 95124 |
| GAMEL, LAURY L. | | 17442 |
| GAQUIN, JOHN F. | | 34547 |
| GARBERT, PETER J. | | 43456 |
| GARCIA-VERGARA, HUMBERTO | | 64824 |
| GARCIA, CHRISTAIN | | 30893 |
| GARDNER, DAVID E. | | 83468 |
| GARRARD, SAMUEL L. | 333468 | 30515 |
| GARRECHT, CLARK P. | 348698 | 30652 |
| GARRETT, CHARLES C. | 353201 | 30627 |
| GARRICK, LANIE W. | 330738 | 30583 |
| GARRISON, ROYE C. | | 17462 |
| GARY, CARROL J. | 344382 | 30657 |
| GARZA, ERNESTO | | 43457 |
| GASTINEAU, N.E. | 348680 | 30848 |
| GATHERUM, STANLEY D. | | 57508 |
| GAZDA, RICHARD | 440776 | 31085 |
| GENTILE, FRANK M | 764696 | 31350 |
| GENTRY, RONALD C. | | 37463 |
| GEORGAKOPOULOS, ILIAS C. | | 52620 |
| GEORGE, HENRY | 280701 | 45819 |
| GEORGI, EMIL H. | 443549 | 31379 |

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| GERACE, JOHN A. | | 80343 |
| GERAGHTY, JIM D. | 384768 | 31398 |
| GERANT, JOHN G. | | 57512 |
| GERSCH, BARRY L. | | 30894 |
| GIANNONE, STEVE C. | | 79528 |
| GIBBONEY, P.L. | 221143 | 31581 |
| GIBBY, BRYCE D. | | 34548 |
| GIBSON, GERALD W. | | 46485 |
| GIBSON, PHILLIP J. | | 99581 |
| GIBSON, RANDALL W. | 353243 | 31573 |
| GILES, J.T., JR. | 927756 | 31896 |
| GILLES, MICHAEL P. | | 34549 |
| GILLIAM, A N | 316018 | 31878 |
| GILLIAM, JULIUS C. | | 49068 |
| GILL, KEVIN W. | | 71105 |
| GILMORE, JAMES C., SR. | | 34550 |
| GIOLITO, WILLIAM B. | | 89782 |
| GLASGOW, J.S. | 329201 | 32281 |
| GLENNON, M.F. | 367763 | 32385 |
| GLODOWSKI, BERT E. | | 43458 |
| GLOSENGER, ELWOOD W. | 353789 | 32451 |
| GLOSSON, DAVID P. | | 71106 |
| GMYREK, EDWARD W. | | 46482 |
| GOACHEE, JAMES C. | 329219 | 32525 |
| GODFREY, JAY D. | | 97114 |
| GODWIN, LANE S. | | 83469 |
| GODWIN, RON | 222935 | 32597 |
| GOEBEL, RICHARD W. | | 21009 |
| GOLDMAN, DANIEL M. | | 71171 |
| GONZALES, CHARLIE | 358812 | 32835 |
| GONZALEZ, EDUARDO C | | |
| GONZALES, G.A. | 234930 | 32675 |
| GOOD, GREG D. | | 30895 |
| GOODSON, T.E. | 513077 | 32928 |
| GORDON, DONALD G. | 397768 | 33051 |
| GORMAN, B.W. | 329235 | 33057 |
| GORMAN, STEVE D. | | 64116 |

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| GORMLEY, BERNARD J. | | 83266 |
| GORRIE, G.W. | 344374 | 33065 |
| GOUGE, PATRICK B. | | 17463 |
| GOVATOS, JOHN D. | | 46539 |
| GRAEBER, RAYNER N. | 439596 | 33467 |
| GRAFF, ROBERT S. | | 37465 |
| GRAFSTROM, BENGT G. | | 64106 |
| GRAHAM, DANIEL E. | | 51662 |
| GRAHAM, GARY W. | 439836 | 33447 |
| GRANT, GEORGE | | 79732 |
| GRANT, JOHN | | |
| GRASNUIS, ROBERT D. | 316042 | 33342 |
| GRASSIA, JOHN | 442467 | 33462 |
| GRAU, FERDINAND L. | 311365 | 33368 |
| GRAU, KARL J. | | 43459 |
| GRAVO, RICHARD D. | | 93739 |
| GRAY, DAN | 342840 | 33354 |
| GRAYELI, FARZIN B. | | 93887 |
| GREEN, CHARLES V. | 443242 | 33639 |
| GREENE, D.L. | 367771 | 33716 |
| GREENE, PETE | 446278 | 33636 |
| GREEN, GERALD A. | | 20713 |
| GREEN, GRANT S. | | 21010 |
| GREKSA, G.J. | 443234 | 33476 |
| GRENIE, ARLES A. | | 37466 |
| GRESHAM, JACK S. | 739896 | 33977 |
| GRIBAS, KENNETH C. | | 34551 |
| GRIESMAN, S.W. | 384743 | 34346 |
| GRIFFIN, D.E. | 449892 | 34243 |
| GRIFFIN, ROBERT B. | | 41545 |
| GRIFFITH, R.G. | | 71172 |
| GRIGGS, ROGER P. | 581082 | 34417 |
| GRIGORIAN, R. | 755298 | 33946 |
| GRIMM, LESLIE | | 79722 |
| GRINER, KENNETH F. | | 34320 |
| GROFF, WILLIAM V. | 546283 | 34764 |
| GROSENHEIDER, L.D. | 434621 | 34845 |

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| GROSS, GEORGE T. | | 57292 |
| GRUBBS, ROBERT E. | | 79899 |
| GRUETZNER, ALLEN R | | 43460 |
| GRULLON, ENRIQUE E. | | 95727 |
| GRZEGORZAK, S.K. | 639443 | 34538 |
| GUDDAT, STEWART A. | 603621 | 34994 |
| GUEITS, JOSE E. | 623983 | 35036 |
| GUERRA, HECTOR M. | 407387 | 35124 |
| GUFFIN, JULIAN F. | | 43461 |
| FUMA, JOSE | | 82708 |
| GUNDLACH, P.S. | | 41235 |
| GUNDLACH, RONALD H. | | 43462 |
| GUNN, GEORGE H. | 603753 | 35112 |
| GURL, JOHN T. | 340240 | 35147 |
| GURTNER, NORBERT J. | | 20715 |
| GUSTAVSON, MARK L. | | 37467 |
| GUTIERREZ, HERMAN | | 52621 |
| GUY, GIDEON | | 57293 |
| GWYNN, GARY L. | 632695 | 35297 |
| HABLIG, HANS W. | | 17466 |
| HABY, CLIFFORD M. | | 95125 |
| HACKNEY, STEPHEN A. | | 58992 |
| HADLOCK, JERRY L. | | 59249 |
| HAGLE, JAMES M. | 356567 | 35487 |
| HAHN, TODD M. | | 15660 |
| HAIGHT, R.A. | 423798 | 35582 |
| HAIGLER, WAYNE W. | 155697 | 35607 |
| HALL, CONNIE M. | | 46934 |
| HALL, HARRY F. | 185983 | 35721 |
| HALL, HOWARD W. | 527853 | 35669 |
| HALL, JAMES C. | | 83470 |
| HALL, JOHN A. | | 23603 |
| HALL, LARRY M. | 767442 | 35757 |
| HALL, OLMOND LARRY | | 71302 |
| HALLOREN, DIAN | | 70907 |
| HALL, VANCE | 608984 | 35728 |
| HALL, WILLIAM G. | 239830 | 35714 |

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| HALOSZKA, DAN | | 73298 |
| HALPIN, WILLIAM | | 59203 |
| HAMBLIN, LEON H. | 218669 | 35933 |
| HAMEED, K. | | 41898 |
| HAMILTON, RANDY L. | | 68206 |
| HAMILTON, WALCOTT B. | 443564 | 35911 |
| HAMOND, STANFORD J. | | 37468 |
| HAMMON, THOMAS A. | | 71173 |
| HANCOCK, LANCE E. | | 97119 |
| HANEBUTT, BRIAN J. | | 97116 |
| HANEY, FRED C. | | 71175 |
| HANEY, RICHARD S. | 519975 | 36096 |
| HANLEY, DARL R. | 358804 | 36084 |
| HANNON, HARLAND N. | | 68205 |
| HANNON, JAMES H. | | 99631 |
| HANSEN, LISA B. | | 71176 |
| HANSEN, PHILLIP W. | 353250 | 36083 |
| HANSHAW, RONALD G. | 587048 | 64109 |
| HARBOUR, JERRY W. | | 59250 |
| HARLEY, HAROLD L. | 227165 | 36817 |
| HARMON, PAUL F. | | 79721 |
| HARNDEW, C.A. | 367755 | 36718 |
| HARN, GEORGE F. | 327908 | 36712 |
| HARPER, JAMES D. | 338590 | 36723 |
| HARRIS, D.A. | 312918 | 36856 |
| HARRIS, DAYLE M. | 289561 | 36987 |
| HARRIS, JAMES A. | 611905 | 36864 |
| HARRIS, M.M. | 609305 | 36876 |
| HARRISON, JOSEPH D. | | 97117 |
| HARRIS, R.J. | | 70906 |
| HARTLEY, JOSEPH | | 71177 |
| HARTMAN, E.D. | 321984 | 36917 |
| HARTMAN, JAMES T. | 768218 | 08869 |
| HARVEY, EDWIN J. | 442475 | 36946 |
| HARVEY, THOMAS R. | | 17467 |
| HASSETT, PATRICK R. | | 64117 |
| HASTINGS, DONNA S. | | 37469 |

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| HASTINGS, G.A. | 582593 | 37751 |
| HATFIELD, ERIC W. | | 99582 |
| HAUSWIRTH, JOHN A. | 527820 | 37860 |
| HAUTH, DAVID A. | | 83471 |
| HAWKINS, TOM | | 73299 |
| HAZEN, JAMES E. | | 71178 |
| HECKENBERGER, RICHARD | 311530 | 38339 |
| HEIDAMI, M. | | 73366 |
| HEINRICH, ALAN P. | 451807 | 38453 |
| HELSEL, RONALD W. | | 93888 |
| HELTON, DALE D. | 311704 | 38586 |
| HEM, NORMAN H. | | 98490 |
| HENDERSON, GARY T. | | 15662 |
| HENDERSON, JULIE K. | | 15663 |
| HENDERSON, MICHAEL D. | | 59202 |
| HENDRICKSON, RICHARD A. | | 99632 |
| HENNE, CRAIG M. | | 23606 |
| HENNESSEK, THOMAS A. | | 65704 |
| HENRIKSEN, MORTEN D. | | 15664 |
| HENRY, THOMAS C. | 513093 | 38814 |
| HERRINGTON, MICHAEL C | 479287 | 39156 |
| HERRSCRAFT, RONALD J. | | 98489 |
| HESSLER, ROBERT R. | 433169 | 39297 |
| HIATT, H.W. | 322073 | 39373 |
| HIBBARD, BARTON J. | 599977 | 39382 |
| HICKS, JOHN M. | | 23607 |
| HIGGINS, RAYMOND F. | 446336 | 39624 |
| HIGHTOWER, JOHN M. | | 23608 |
| HIGUERA, C. | 181180 | 39683 |
| HILGENDORF, RICHARD E. | | 71533 |
| HILLA, A.R. | | |
| HILL, BRIAN R. | | 46933 |
| HILLIS, EDGAR A. | | 37249 |
| HILLIS, ROBERT W. | | 79506 |
| HILL, WARREN B. | 220194 | 39795 |
| HILYARD, DAVE C. | | 68195 |
| HINSDALE, J.P. | 329243 | 40003 |

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| HINTON, EDWARD J. | 171082 | 40011 |
| HIPPS, WILLIAM D. | 376673 | 40129 |
| HIRSCH, WILLIAM J. | | 86141 |
| HIRSCH, ROBERT J | | |
| HISEL, LOUIS W. | 329250 | 40176 |
| HODGERS, BEN | 301960 | 40369 |
| HOFFMAN, BOB | | |
| HOFFMAN, GARY | | 73367 |
| HOLDCRAFT, C.T. | 210948 | 40680 |
| HOLLAND, DUANE V. | | 71534 |
| HOLLARN, THOM AS J. | | 97118 |
| HOLLEY, JAN | | 44038 |
| HOLUB, LORRI L. | | 87159 |
| HOOTON, JAMES W. | 338582 | 41222 |
| HOPKINS, JIMMIE B. | 281147 | 41356 |
| HOPP, DONALD E. | | 60462 |
| HORANA, ALFREDO | | |
| HORNE, WILLIAM F. | | 64132 |
| HOTTENSTEIN, DENNIS N. | | 71536 |
| HOUCK, D.R. | | 48630 |
| HOUSE, ROBERT L. | | 71308 |
| HOUSTON, J.L. | | 79714 |
| HOVERKAMP, GEORGE V | | 43464 |
| HOWARD, CARROLL M. | 353813 | 41777 |
| HOWARD, CHARLES | | 7270 |
| HOWARD, JAMES W. | 449967 | 41749 |
| HOWARD, L.A. | 107879 | 41809 |
| HOWARD, PAUL | | 17471 |
| HOWE, JOHN B. | | 64826 |
| HOWE, KEITH A. | | 17472 |
| HOWLEY, WILLIAM P. | 412874 | 41886 |
| HUDDLESTON, DAVID W. | | 30896 |
| HUDDLESTON, JAMES D. | | 81891 |
| HUDSON, C.V. | 193524 | 42182 |
| HUDSON, ROBERT E. | | 17611 |
| HUEBEL, JARED M. | 223933 | 42188 |

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| HUFFMAN, ROBERT L. | | 30897 |
| HUFFMAN, W.S. | | 17612 |
| HUGGINS, CLIFFORD E. | | 84257 |
| HUGHES, EDDINGS T., JR. | | 42320 |
| HUGHES, J.W. | 4358918 | 42341 |
| HUGHES, JAMES R., JR. | 276998 | 42288 |
| HUGHES, JAMES L. | | 30898 |
| HULSE, DOUGLAS D. | | 68193 |
| HUMPHREY, BRIAN F. | 228688 | 42461 |
| HUMPHREYS, FRANK J. | | 93891 |
| HUNTER, RICHARD I. | 383646 | 42557 |
| HUNTER, ROBERT E. | | 79559 |
| HUNT, H.L. | 338574 | 42582 |
| HUNT, LARRY E. | | 30899 |
| HURD, JERRY W. | | 80141 |
| HURLEY, JAY | | 42777 |
| HURON, ROBERT C. | 528612 | 42783 |
| HUSSAIN, GHULAM | | 43466 |
| HUTCHINSON, DAVID | | |
| HUTCHINGS, ROBERT A. | 364745 | 42953 |
| HUTSON, ROBERT T. | 229922 | 42958 |
| HYDE, JAMES A. | 265546 | 43085 |
| HYDE, MICHAEL | | 17473 |
| IMAM, NAUSHAD | | 58042 |
| INGBER, A.L. | | 70908 |
| INGEBRETSEN, ROAR | 592840 | 43250 |
| INGHRAM, DENNIS R. | 617233 | 43309 |
| INGOGLIA, PHILLIP C. | 284919 | 43253 |
| INGRAM, C.F., II | 453837 | 43278 |
| INMAN, B.M. | | 37593 |
| INSUA, EDUARDO J. | | 30900 |
| IQBAL, SAFDAR | | 72885 |
| IRANIPOUR, FRAZIAN | | 64120 |
| IRELAND, RICHARD | | 98491 |
| IVEY, DAVID J. | 438341 | 43430 |
| JACKSON, ANDY C. | | 41238 |
| JACKSON, BARNARD D. | | 97120 |

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| JACKSON, CHARLES W | 390278 | 43533 |
| JACKSON, FRED H. | 332932 | 43530 |
| JACKSON, WALTER I. | 332924 | 43611 |
| JACKSON, WELLS T. | | 17613 |
| JACOBOWITZ, LEONARD | 409680 | 43693 |
| JACOBS, DAN | | 17521 |
| JAKOVLSEVIC, DRAGAN | | 79713 |
| JAMESON, DONALD L. | | 93893 |
| JANKE, LARRY J. | 446401 | 43854 |
| JARRETT, MARK D. | 434902 | 43980 |
| JASKEWICZ, A.A. | 334334 | 44011 |
| JATTANSINGH, MOHANLAL | | 37250 |
| JENKS, JOHN O. | | 17606 |
| JENNINGS, HERSCHEL T. | 233759 | 44180 |
| JENSON, LOUIS KEITH | 592063 | 23609 |
| JOFFRION, STEVEN C. | 529552 | 44408 |
| JOHANSEN, WILLIAM | 277764 | 44409 |
| JOHNSON, BARRY W. | | 20774 |
| JOHNSON, C.T. | 277095 | 44551 |
| JOHNSON, CHARLES R. | | 42470 |
| JOHNSON, D. EDWARD | 294272 | 44497 |
| JOHNSON, EDWARD E. | | 80431 |
| JOHNSON, EUGENE E. | | 99583 |
| JOHNSON, FRED | 268482 | 44629 |
| JOHNSON, GARY M. | 517649 | 44692 |
| JOHNSON, GRANT S. | 576702 | 44717 |
| JOHNSON, JAMES A | | 78817 |
| JOHNSON, KARI | 385419 | 44730 |
| JOHNSON, LELAND J. | 446393 | 44830 |
| JOHNSON, PETER L. | | 78818 |
| JOHNSON, R.E. | 304899 | 44603 |
| JOHNSON, RICHARD A. | 332916 | 44676 |
| JOHNSON, RICHARD V. | | 99584 |
| JOHNSON, RICHARD A. | | 42471 |
| JOHNSON, ROBERT BARRY | 345827 | 44681 |
| JOHNSON, WILLIAM G. | | 99586 |
| JOHNSTON, ALBERT | 435261 | 45182 |

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| JOHNSTON, PHILIP R | | 17607 |
| JONES, BRETT W. | | 15671 |
| JONES, GEORGE E. | | 68192 |
| JONES, HERBERT W., JR. | | 99587 |
| JONES, LYNN W. | | 70654 |
| JONES, R.B. | 314989 | 45316 |
| JONES, STEPHEN D. | | 97122 |
| JONES, W.D., JR. | 233957 | 45446 |
| JONES, WENDELL W. | 201715 | 45450 |
| JONES, WILLIAM G. | | 37251 |
| JORDAN, W.O. | 299875 | 45805 |
| JORSEY, ALLEN | 300830 | 45825 |
| JORSEY, ALLEN, JR. | 654319 | 45754 |
| KALAITZIDIS, KOSMOS | | 29625 |
| KALAJI, FEHMI | | 81893 |
| KALANTSRI, FEREADOON | | 37252 |
| KALISKY, PETER J. | | 93894 |
| KAMIKAWARE, MOTOAKI J. | | 15667 |
| KAMMER, FRANK B. | 649434 | 73369 |
| KAMRAD, KURT M. | 603597 | 46162 |
| KANE, STEVEN G. | 578104 | 46176 |
| KARMEL, MOSHE | | 81894 |
| KARNOFSKY, KEITH M. | | 46488 |
| KASTANES, GEORGE A. | | 36515 |
| KATARIA, DILIP M. | | 36516 |
| KATSTRA, ROBERT J. | 230151 | 46307 |
| KAY, T.L. | 338558 | 46355 |
| KAY, WAYNE D. | | 46489 |
| KEAHEY, JACK R. | | 00663 |
| KEANE, M.D. | | 76018 |
| KEATING, WALTER J. | 362814 | 46477 |
| KEELER, R.L. | 329292 | 46576 |
| KEENAN, JOSEPH E. | | 23610 |
| KEITH, DARRELL M. | | 41610 |
| KELEHER, STEPHEN T. | | 64125 |
| KELLEHRE, ZANK J. | | 46535 |
| KELLER, C.R. | 227041 | 46751 |

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| KELLY, ALLAN J. | | 51666 |
| KELLY, DANIEL J. | | 95717 |
| KELLY, DONALD M. | 353284 | 46801 |
| KELLY, WILLIAM J. | 307967 | 46805 |
| KELONE, DAVID P. | | 45876 |
| KENDRICK, JUDSON R. | 616383 | 46975 |
| KENNEDY, CHARLES L. | | 67738 |
| KENNEDY, MICHAEL J. | | 36517 |
| KENNERLY, PATRICK D. | | 72172 |
| KENNING, DAVID G. | | 79225 |
| KENT, JESSE M. | 441659 | 47096 |
| KHAN, MAZIR | 880294 | 59207 |
| KHAN, ZEB | | 40112 |
| KHORSHIDCHEHR, JAHANBAKH | | 68191 |
| KHOSHLAFZ, ALEXANDER A. | | 30905 |
| KILIAN, CHARLES J. | 329300 | 47652 |
| KILLINGSWORTH, MICHAEL J | | 30906 |
| KIMMEL, KARL D. | | 29621 |
| KING, STAN | | 79719 |
| KINGSTON, KENNETH S. | | 89786 |
| KING, WAYNE E. | | 72173 |
| KINGWELL, R.A. | 234385 | 48129 |
| KITCHENS, ROBERT M. | 154617 | 48431 |
| KITCHENS, ROBERT E. | | 20711 |
| KLAY, JONNIE M. | | 42472 |
| KLEIGLE, R.P. | 182410 | 48650 |
| KLEIN, D.P. | 623587 | 48513 |
| KLOPP, ANTHONY F. | 337113 | 48747 |
| KLOTZ, KEVIN T | | 669 |
| KLUTHE, D.B. | 393108 | 48760 |
| KNECHT, MARVIN J. | | 87160 |
| KNIGHT, RICHARD D. | | 25089 |
| KNOPP, S.M. | 208785 | 48961 |
| KNOX, MICHAEL F. | | 89787 |
| KOBLAS, JAMES J. | 329318 | 49119 |
| KOLL, ROGER L. | 529578 | 44330 |
| KOONTZ, WENDELL P. | | 36518 |

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| KORBY, JAMES M. | | 29628 |
| KORCZYNSKI, E.J. | 357301 | 49459 |
| KOTLER, GIDEON | | 87161 |
| KOTSCHACK, OSSI | 679522 | 49527 |
| KOUWENHOVEN, HIENRICH J | | 40574 |
| KOWALSKI, ROBERT J. | 188078 | 49566 |
| KOZACK, GERALD W. | | 67739 |
| KOZIOL, ROBERT L. | | 80433 |
| KRAMER, MICHAEL | | 23612 |
| KRANKER, PETER L. | | 68190 |
| KRANTZ, ARON F. | 35300 | 49607 |
| KRAVNER, D.L. | | |
| KRASOWSKI, DONALD | | 89783 |
| KRIELOW, WAYNE A. | 756643 | 95722 |
| KRIEPS, R.N. | 398677 | 49810 |
| KRISSMAN, RUDOLPH R. | | 95723 |
| KRITCHER, L.M. | 398347 | 49819 |
| KROG, ANDREW | 234328 | 49858 |
| KROTZ, GARY E. | 319632 | 49868 |
| KRUAYAI, DICK | | 73893 |
| KUBECK, CANDALYN C. | | 65790 |
| KUNKEL, DENNIS JOSEPH | | 95724 |
| KUNTZ, ALBERT W. | 241117 | 50048 |
| KUROWSKI, LARRY | | 48484 |
| KURTZ, HUGO E. | 421461 | 50086 |
| KURZ, E.S. | 434928 | 50043 |
| LABERGE, R.M. | | 50158 |
| LADEWIG, GLENN A. | 453332 | 50269 |
| LAHAM, WILLIAM J. | | 71312 |
| LAINE, JAMES R. | 538231 | 50305 |
| LAING, RICHARD C. | | 89784 |
| LAMAUTE, LYONEL L. | | 76656 |
| LAMBIE, JOHN M. | 433227 | 50407 |
| LAMECKER, DENNIS R. | | 99589 |
| LAMOREAUX, CHARLES R. | | 89788 |
| LAMPKE, ROBERT H. | 388819 | 50453 |
| LANCIA, ANTHONY | | 64820 |

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| LANDA, GEORGE | 450080 | 50460 |
| LANDAN, CHARLES D. | | 46928 |
| LANDIS, DAVID M. | 355065 | 50541 |
| LANDRUM, WILLIAM A. | | 51713 |
| LANDRY, D.J. | 312959 | 50499 |
| LANDRY, L.R. | | 86724 |
| LANE, ARNOLD Q. | | 99634 |
| LANE, BRADLEY | | 20716 |
| LANE, DAVID N. | 591560 | 50502 |
| LANE, DAVID G. | 434555 | 50467 |
| LANE, FRANKLIN W. | 319137 | 50524 |
| LANE, G.B. | 344499 | 50519 |
| LANE, ROBERT O. | | 17522 |
| LANGEL, WILLIAM A. | 513101 | 50586 |
| LANGER, LAWRENCE E. | 677639 | 50660 |
| LANGILLE, BLAKE C. | | 89789 |
| LANTZ, K. | | 43851 |
| LANTZ, WESLEY J. | | 66267 |
| LAPOINTE, JOHN G. | | 30909 |
| LAPP, CHAUNCEY M., JR. | 432872 | 50863 |
| LARSEN, JOHN R. | | 52770 |
| LARSON, JAMES R., JR. | | 81896 |
| LASALLE, JEFFREY C. | | 65788 |
| LASKEY, CHARLES A. | | 45879 |
| LATHAM, EDWARD D. | | 17523 |
| LATHAM, RICHARD C. | 632133 | 51138 |
| LATHAM, WILLIAM C., JR. | | 67741 |
| LATORRE, JOSEPH G. | | 20779 |
| LAURIA, LOUIS J. | 434936 | 51213 |
| LAUZON, LAURENCE R. | | 65786 |
| LAVERELLO, EUGENE F. | 285874 | 51266 |
| LAWRENCE, CHARLES W. | | 31861 |
| LAWRENCE, STEPHEN E. | | 42473 |
| LOWSON, JOEL H. | | 80473 |
| LAWTON, ROBERT G. | 229625 | 51365 |
| LAZAR, DENNIS | 337121 | 51501 |
| LEABO, WALTER I. | | 67743 |

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| LEADBETTER, G.D. | 267500 | 51677 |
| LEA, ROBERT G. | | 23614 |
| LEARY, JAMES, W. | | 00664 |
| LEBOUTILLIER, DAVID | 324186 | 81897 |
| LECLAIR, ERNEST J., JR. | | 88925 |
| LEE, ALLAN R. | 427799 | 51743 |
| LEE, JAMES R. | 353326 | 51779 |
| LEE, JAMES M. | | 88926 |
| LEISSLE, JOHN J. | | 58043 |
| LEITNER, S.R. | 529628 | 51995 |
| LEMANN, W.B. | 329839 | 52003 |
| LEMAR, ROBERT B. | | 81898 |
| LEMBESSIS, THOMAS | | 67745 |
| LEMBO, GARY | | 20193 |
| LEMOI, WAYNE T. | | 58044 |
| LEONARD, JOHN G. | 377648 | 52088 |
| LEONARD, RICHARD C. | | 58045 |
| LEONHARDT, STEPHEN J. | | 64818 |
| LESLIE, GARY A. | 443333 | 51730 |
| LESLIE, JOHN V. | | 17524 |
| LEVY, DOUGLAS D. | 529636 | 52246 |
| LEVY, SIMON | | 674 |
| LEWANDOWSKI, RAYMOND A | 326801 | 52259 |
| LEWICKI, JOHN A. | 393116 | 52356 |
| LEWIS, THOMAS H., JR. | 353334 | 52337 |
| LIDDELL, JOHN L. | | 42474 |
| LIDDLE, JAMES R. | | 64133 |
| LIEBERMAN, RICHARD M. | 268219 | 52472 |
| LIEN, LOWELL J. | | 86137 |
| LIMOR, NACHSHON H. | | 31863 |
| LINCOURT, RICHARD P. | | 88928 |
| LINDEN, BRIAN E. | 307954 | 52557 |
| LINDNER, ANTHONY | | 31864 |
| LINDSEY, LARRY | | 79720 |
| LINGLE, GEORGE W. | 438127 | 52654 |
| LINGNER, RICHARD F. | 305581 | 52639 |
| LINK, C.R. | 332908 | 52640 |

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| LINK, RODNEY L. | | 31865 |
| LINN, DENNIS N., JR. | | 99635 |
| LIVINGSTON, THOMAS A. | | 79728 |
| LOFTUS, TIMOTHY P. | | 48023 |
| LOGAN, DAVID R. | | 45880 |
| LOGAN, JOSEPH L., JR. | 677559 | 31866 |
| LOOP, DAMON C. | 446476 | 53317 |
| LOOPER, WILLIAM C. | 419820 | 53341 |
| LOPEZ, JAMES V. | | 99636 |
| LORANGER, ROBERT W. | 435867 | 53437 |
| LORENZO, GUSTAVO A. | | 88929 |
| LORUSSO, DOMINIC | | 23616 |
| LOSEE, JEFFERY D. | 419838 | 53442 |
| LOSSMAN, WAYNE M. | 507392 | 53445 |
| LOUDERMILK, JAMES A. | | 99590 |
| LOUGHEED, RUSSELL J. | | 72886 |
| LOVE, FRANK W. | 439884 | 53541 |
| LOVE, GEORGE R. | | 10182 |
| LOVE, STEVEN W. | | 20197 |
| LOWDERMILK, ALAN M. | | 36520 |
| LUGINBUEL, G.R. | 219949 | 54003 |
| LUSTRE, TONY | | 81989 |
| LUTOSTANSKY, DAVID P. | 441535 | 54143 |
| LUZNAK, LEONARD J. | | 67746 |
| LYNCH, JOHN R., JR. | | 00675 |
| LYNN, HENRY C. | 357376 | 54262 |
| LYTER, HENRY B. | 349696 | 54404 |
| LYTLE, RICHARD A. | | 88930 |
| MAAROUF, DAN M. | | 15648 |
| MACHISE, JAMES D. | 605238 | 54513 |
| MACKEIL, JOHN M. | 220368 | 54458 |
| MACLENNAN, RODERICK C. | 346478 | 54555 |
| MACRAE-HALL, JOHN M. | | 79900 |
| MADDEN, JOHN J., JR. | 434449 | 54627 |
| MADDOXX, WILLIAM W. | | 68211 |
| MAHAN, ROBERT G. | | 87162 |
| MANDAVI, MOHAMMAD | | 99617 |

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| MAJERES, DARWIN A. | 328112 | 54894 |
| MALCHOW, KENNETH R. | 333393 | 54989 |
| MALDONADO, LEWIS M. | | 31868 |
| MALONE, STEVEN J. | 384347 | 55103 |
| MANDULEY, LEONARD | 67747 | |
| MANION, CHRISTOPHER M. | | 69187 |
| MANNERS, DAVID A. | | 88932 |
| MANNING, BOBBY S. | | 88933 |
| MANN, WILLIAM B. | 383869 | 55122 |
| MANSFIELD, ROBERT C. | | 74467 |
| MANSIL, THAD | 591222 | 59619 |
| MARCIANO, ANTHONY P. | 231936 | 55360 |
| MARCINEK, JERRY V. | 435875 | 55284 |
| MARCOMICHALIS, NICOLAS M. | | 23617 |
| MARDIS, KENNETH B. | | 81990 |
| MARIMAN, J.S. | | 81991 |
| MARINO, E.H. | 327858 | 55415 |
| MARKS, MARVIN D. | 229948 | 55362 |
| MARSHALL, HERBERT G. | 214213 | 55496 |
| MARSHALL, ROBERT W. | 437392 | 55609 |
| MARSIO, WILLIAM J. | | 69237 |
| MARTIN, CHRISTOPHER B. | | 15652 |
| MARTINEZ-ALEGRI, JOSE | | 69238 |
| MARTINEZ, G.J. | | 81992 |
| MARTIN, GORDON ARTHUR | | 58046 |
| MARTIN, JEFFREY A. | | 88934 |
| MARTIN, LUTHER S. | 610238 | 55863 |
| MARTISIUS, ERIC D. | 329391 | 56153 |
| MARYANNAKIS, ARTEMIOS | | 80474 |
| MARZOLF, JULIAN | | 51722 |
| MASON, HUGH | | 79903 |
| MASON, J.A. (ALEX) | 446583 | 56316 |
| MASON, PHILIP A. | 333385 | 56288 |
| MASON, THURMAN O. | | 87163 |
| MASSUING, MALCOLM E. | 223164 | 56271 |
| MATHEYS, BRETT C. | | 36350 |
| MATHISEN, NORMAN A. | | 56352 |

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| MATT, HAROLD A., JR. | 450106 | 56449 |
| MATTHEWS, ED | 73894 | |
| MATTHEWS, P.M. | 339481 | 56318 |
| MAUGERI, PETER J. | | 40113 |
| MAURER, AUGUST J., III | | 23618 |
| MAURER, THOMAS A. | | 65784 |
| MAURO, ANTHONY F. | | 38873 |
| MAXWELL, ALLEN R. | | 52619 |
| MAXWELL, CRAIG | 332882 | 56692 |
| MAYER, ALLAN A. | | 42475 |
| MAYER, ROBERT E. | | 68208 |
| MAYNARD, C.G. | | 56769 |
| MAYS, ROBERT L. | | 40114 |
| MAY, WILLIAM H. | | 51690 |
| MCCABE, LARRY T. | | 86138 |
| MCCAFFERTY, ELWOOD S. | 513119 | 57173 |
| MCCALL, R.S. | 617506 | 57028 |
| MCCARTHNEY, HERBERT V. | 353599 | 57188 |
| MCCARTHY, J.I. | 311597 | 57267 |
| MCCARTHY, JAMES C. | | |
| MCCARTHY, JAMES F. | | 64124 |
| MCCARTHY, JOHN A. | 450114 | 57143 |
| MCCARTHY, T.M. | 529669 | 57224 |
| MCCARTNEY, KEN L. | 223420 | 57266 |
| MCCLANNAHAN, RICHARD W. | | 65707 |
| MCCLELLAND, TOM W. | | 79228 |
| MCCLENDON, PHILLIP H. | | 80476 |
| MCCLURE, JON W. | 362251 | 57422 |
| MCCONNELL, SPENCER L. | 229559 | 57546 |
| MCCONNELL, TIMOTHY R. | | 42476 |
| MCCONNELL, VICTOR I. | 446542 | 57519 |
| MCCORMACK, J.M. | 406835 | 57581 |
| MCCRACKEN, KEITH K. | | 88935 |
| MCDONALD, RICHARD | | 97107 |
| MCDOWELL, JAMES D. | | 87164 |
| MCDUFF, RICHARD A. | 321943 | 58025 |
| MCEACHERN, ROBERT J. | 307942 | 58172 |

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| MCELHANEY, J.O. | 186361 | 58187 |
| MCFARLAND, STEVEN L. | | 42477 |
| MCGEE, JACK A. | | 95116 |
| MCGONIGLE, PAUL M. | | 00665 |
| MCGOWAN, ROBERT W. | | 99618 |
| MCGUIRE, MIKE | | 51714 |
| MCGURR, PAUL | | 73895 |
| MCHENRY, JAMES R. | 384594 | 58635 |
| MCKEE, KENNETH R. | 310540 | 58759 |
| MCKENNA, C.E. | 297754 | 58762 |
| MCKENNAN, D.J. | 522631 | 58777 |
| MCKENNA, WILLIAM | | 79112 |
| MCKENNEY, DOUGLAS F. | | 95118 |
| MCKENZIE, STUART W. | | 32420 |
| MCKEON, ARTHUR T. | 773317 | 58787 |
| MCKESSON, BOBBY C. | | 68207 |
| MCLAUGHLIN, JACK | 529693 | 59062 |
| MCLAUGHLIN, JOSEPH | | 23619 |
| MCLAUGHLIN, ROLLAND D. | | 95726 |
| MCLEAN, DONALD W. | 541409 | 59079 |
| MCLERAN, CHARLES S. | 227785 | 59118 |
| MCMAHON, MICHAEL S. | 435883 | 59153 |
| MCMANUS, EDWIN J. | | 32421 |
| MCMIILLEN, WILLARD | 603779 | 59174 |
| MCNEAR, GARY F. | 433797 | 59285 |
| MCNEILL, WILEY R. | | 72175 |
| MCQUIGG, ANDREW R. | 414250 | 59425 |
| MCRAE, CANDACE M. | | 64123 |
| MCRAE, J.D. | 347534 | 59408 |
| MCSTRAVICK, LEO J., JR. | 441667 | 59452 |
| MEANS, JAMES A. | | 36351 |
| MECCIA, THOMAS N. | | 58048 |
| MEDLOCK, JOHNNY P. | | 67877 |
| MEGGS, HAROLD G. | | 64822 |
| MELLA, SHERWIN J. | | 45882 |
| MENDEZ, E.F. | 259929 | 59891 |
| MENGHINI, RAYMOND L. | 346395 | 59757 |

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| MERCER, DAVID E. | 285924 | 59765 |
| MERCER, M.B. | 221416 | 59778 |
| MERKLE, WILLIAM M. | 741363 | 55410 |
| MERLY, HECTOR M. | 259960 | 59939 |
| MERRICK, CHRISTINA L. | | 72178 |
| MERSON, JOHN R. | | 72918 |
| MERZLAK, RONALD M. | 341834 | 59857 |
| METZGER, RODGER D. | 848895 | 87165 |
| MEYER, FRANK L. | | 69239 |
| MEYERS, JOSEPH W. | | 20190 |
| MEYER, TERRY R. | | 67878 |
| MICHAEL, DONALD K. | | 42478 |
| MICK, CHARLES E. | | 80477 |
| MIHALOW, ANDY | 353367 | 60171 |
| MILANETTE, TERRY | 433300 | 60198 |
| MILKE, ROY | 632760 | 60238 |
| MILLER, CHARLES A. | 434464 | 60565 |
| MILLER, DANIEL P. | 688945 | 60500 |
| MILLER, FRANK | 349662 | 60329 |
| MILLER, JAMES A. | 438283 | 60557 |
| MILLER, JAMES M. | 435636 | 60567 |
| MILLER, ROBERT L. | 237768 | 60495 |
| MILLER, ROBERT K. | 596072 | 60378 |
| MILLER, S.D. | 383794 | 60486 |
| MILLER, THOMAS D. | | 95119 |
| MILLER, THOMAS O. | | 17525 |
| MILLER, WILLIAM B., III | 528497 | 60481 |
| MILLIGAN, CLYDE J. | | 25086 |
| MILLWARD, DONALD R. | | 17161 |
| MINARDI, J.V. | 384701 | 60946 |
| MIR, RICHARD C. | 736447 | 81994 |
| MISENCIK, PAUL R. | 362806 | 61129 |
| MISKOTTEN, EDWARD | 222687 | 61138 |
| MISSICK, THOMAS R. | | 79744 |
| MISTON, PIERRICK W. | 774489 | 29626 |
| MITCHEL, D.S. | 440677 | 61230 |
| MITCHELL, CURTIS G. | 353375 | 61180 |

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| MITCHELL, SAMUEL C. | 446526 | 61232 |
| MITTELSTAEDT, G.J. | 218180 | 61250 |
| MISE, LAWRENCE K. | 376509 | 58049 |
| MOFFIT, ROBERT K. | 327882 | 61419 |
| MOFFITT, CHRISTOPHER S. | | 41607 |
| MOKRY, FRANK B. | | 68196 |
| MOKTADIER, JOHN A. | | 46536 |
| MOLIN, STANLEY C. | 353845 | 61458 |
| MOLL, ROGER | 228163 | 61471 |
| MONTFORT, MIKE | | 74463 |
| MONTGOMERY, DOYNE J. | 223131 | 61539 |
| MOODY, WILLIAM E. | | 99620 |
| MOORE, DONALD B. | 364794 | 61713 |
| MOORE, JOSEPH C. | | 67880 |
| MOORE, RICHARD W. | 277749 | 61722 |
| MOORE, RICHARD T. | | 51691 |
| MOORE, ROBERT E. | 512046 | 61844 |
| MOORE, ROY E. | 344515 | 61681 |
| MOORE, WILLIAM H. | | 45883 |
| MORA, CONRAD A. | 451617 | 61961 |
| MORANA, ALFREDO | | 58050 |
| MORANT, PETER J. | | 81995 |
| MOREY, FRANK | | |
| MORGAN, BRUCE | | 79718 |
| MORGAN, DAVID P. | | 00666 |
| MORGAN, DONALD G. | | 67881 |
| MORGAN, J.C. | 356964 | 62108 |
| MORGAN, JOHN C. | | 99637 |
| MORGAN, KENNETH S. | 396796 | 62144 |
| MORREY, FRANK J. | 425686 | 62215 |
| MORRIS, CHARLES E. | | 64134 |
| MORRIS, CHUCK E. | 209320 | 62262 |
| MORRIS, JOHN W. | 179622 | 62279 |
| MORRIS, KENNETH S. | | 60030 |
| MORRIS, MAXWELL S. | 609339 | 62226 |
| MORRISON, DAVID L. | | 79509 |
| MORRISON, EDWARD M. | 390328 | 62471 |

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| MORRISON, JOHN M. | | 17526 |
| MORRISION, R.G. | 332940 | 62507 |
| MORRIS, RODNEY C. | | 00667 |
| MORRIS, WILLIE L. | 379081 | 62291 |
| MORTON, CARL V. | | 62554 |
| MOSELEY, BARRY L. | | 17162 |
| MOSHER, JOHN W. | | 69240 |
| MOSHER, ROBERT R., III | | 79734 |
| MOSLENER, CARL F. | 379693 | 62674 |
| MOTLEY, ALDRICH A. | | 46680 |
| MOYER, THOMAS | | 79529 |
| MUDGE, RAYMOND M. | | 25087 |
| MULDER, MARK K. | | 41608 |
| MULLAHEY, MARK | | 51700 |
| MULLER, KENNETH A., III | 620393 | 62954 |
| MULLIGAN, BOB | | |
| MILLINS, ESTEN R. | | 25088 |
| MUNOZ, R.W. | 237974 | 63155 |
| MUNSTERMAN, RICHARD A. | 332197 | 63125 |
| MURPHY, JIM M. | 443390 | 63452 |
| MURPHY, ROBERT J. | | 72179 |
| MURPHY, RONALD J. | | 79507 |
| MURPHY, T.B. | 344549 | 63284 |
| MURRAY, N.M. | 297739 | 63396 |
| MUSICK, CHUCK | 433755 | 63509 |
| MUTARI, R.J. | 805358 | 48093 |
| MYHAL, WALTER J. | | 63598 |
| MYER, BOB | | |
| MYERS, CHARLES B. | 320895 | 63619 |
| MYERSCOUGH, RICHARD D. | 629931 | 63628 |
| NADEAU, E.J. | 902627 | 63646 |
| NADOLNY, JOHN E. | | 52484 |
| NAGLE, JOHN R. | | 17163 |
| NAGY, STEVE I. | | 57887 |
| NALL, ROBERT L., JR. | 529719 | 63686 |
| NAMETH, KILLEY M. | | 45885 |
| NASH, JR, THOMAS | | 99622 |

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| NAUSHAD, IMAM | | |
| NAVICKAS, JOEL | | 52771 |
| NAYPAVER, STEVE A. | | 83341 |
| NEAL, W.G. | | 83342 |
| NEELEY, MAYLON K. | | 69241 |
| NELSEN, R.J. | 254383 | 63911 |
| NELSON, DOUGLAS C. | 643544 | 65705 |
| NEFUTE, JOSEPH A. | 774679 | 64035 |
| NESBITT, FRANK | 927681 | 64066 |
| NESS, RONALD A. | 348243 | 64085 |
| NESTER, R.A. | 439752 | 64097 |
| NEUMANN, PETER G. | | 72180 |
| NEVILLE, RONALD C. | 230003 | 64190 |
| NEWSOM, DAN | | 17527 |
| NICCHIA, L.R. | 347302 | 64451 |
| NICHOLAS, WALLACE VAN | | 87166 |
| NICHOLS, CHARLES R. | | 58796 |
| NICHOLSON, WILLAIM T. | 446591 | 64561 |
| NICHERSON, CHARLES A. | 382267 | 64531 |
| NICODEMUS, IVAN F. | | 64823 |
| NIELSON, PAUL | 632786 | 64660 |
| NIGLES, CHARLES R. | | |
| NILES, CHARLES | | 79902 |
| NIVEN, RICHARD | | 51723 |
| NIXON, JAMES D. | 387167 | 64801 |
| NOLAN, EDWARD F. | 229989 | 64897 |
| NORMAN, JOSEPH S., II | 289280 | 86143 |
| NORRIS, ROBERT | | 51564 |
| NORTHCUTT, E.R. | 233288 | 65078 |
| NUNEZ, JUSTO R. | | 67888 |
| O'CONNELL, PATRICK P. | 688929 | 68725 |
| O'CONNELL, W. J. | | 69237 |
| OATFIELD, JAMES P. | | 51729 |
| OBERLANDER, DONALD H. | 411801 | 65342 |
| OBRIEN, DAVID B. | | 89785 |
| OBRIEN, JAMES P. | | 87387 |
| OCONNELL, JOHN N. | | 72181 |

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| OCONNER, BRIAN T. | 337824 | 65429 |
| ODOM, GERRALD B. | 435180 | 65534 |
| OEHL, ROBERT A. | | 00668 |
| OGDEN, THOMAS H. | 529735 | 65682 |
| OGILVIE, THURSTON L. | | 79747 |
| OKSNEVAD, G.O. | | 83343 |
| OLIEMAN, JACOB | | 17164 |
| OLIVER, JAMES D. | 297705 | 65885 |
| OLIVER, VINCENT J | | 65883 |
| OLMEDA, EDWARD J. | | 58797 |
| OLSEN, GEORGE K. | 627521 | 65972 |
| OLSEN, JOHN W. | | 25090 |
| OLSON, GEORGE E. | | 79748 |
| OLSON, ROBERT K. | | 66831 |
| OLSON, SHAWN H. | | 17169 |
| ONEILL, CLYDE B. | | 50284 |
| ONEILL, RAMON | 581496 | 66058 |
| OOMMEN, N. | | 50286 |
| ORLANDO, RALPH A. | 344564 | 66271 |
| ORLOB, WESLEY J. | | 66267 |
| OROURKE, CHARLES F. | 159939 | 66294 |
| ORTEGA, C.A. | | 83344 |
| ORTKIESE, STEVE R. | 609040 | 66332 |
| ORWIG, JAMES F. | | 99624 |
| OSMAN, DALE E. | | 79508 |
| OSTERLUND, JOHN R. | 435651 | 66524 |
| OSWALD, DUANE R. | 234641 | 66405 |
| OURSLER, RALPH E., JR. | 324855 | 66443 |
| OUZTS, JAMES F., JR. | 395319 | 66454 |
| OWEN, JAMES L. | | 41612 |
| OWENS, THOMAS W. | | 70071 |
| OXENHAM, JOHN | | 58269 |
| OYLER, JOSEPH B. | | 51725 |
| PADILLA, CHRISTOPHER | 693283 | 66553 |
| PALERMO, FRANK GENNAEO | | 93728 |
| PALMER, BRIAN D. | | 83345 |
| PALMER, DOUGLAS M. | 336917 | 66775 |

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| PAPPAS, THEODORE | | 72304 |
| PARADISE, L.F. | 311373 | 66969 |
| PARKER, L.F. | 346320 | 67009 |
| PARKINSON, R.E. | 444174 | 67245 |
| PARK, LARRY L. | 210245 | 66977 |
| PARKS, TOMMIE L. | | 46537 |
| PARRAMORE, MARCUS L. | 384339 | 67272 |
| PARR, WILLIAM J. | 237784 | 67287 |
| PASCHALL, R.L. | 400028 | 67472 |
| PASCHALL, THOMAS M. | 344580 | 67443 |
| PASCHKE, JAY M. | | 45046 |
| PASTRANA, LOUIS | | 59208 |
| PATEL, ANILKUMAR H. | | 65703 |
| PATIN, OSCAR A. | | 72182 |
| PATRICK, DONALD W. | 546325 | 67603 |
| PATROS, GEORGE | | 00671 |
| PATTON, DAVID S. | | 52464 |
| PAUL, BILLY W | | 00672 |
| PAULEY, LEON T. | | 41613 |
| PAYNE, DAVID P. | 316430 | 67861 |
| PAZAMINO, EDISON R. | | 58798 |
| PEACOCK, D.J. | 455659 | 67906 |
| PEACON, BOB | 333419 | 67911 |
| PEDERSEN, ROLF A. | | 46682 |
| PEEPLES, RONALD H. | | 93730 |
| PEERY, THOMAS H. | | 25091 |
| PELL, A.B. | | 98032 |
| PENNIE, JEROME R. | 228361 | 68406 |
| PENROD, GARY B. | | 68433 |
| PEREIRA, CARL J. | | 93731 |
| PEREZ, LUIS M. | | 00673 |
| PEREZ, LUIS A. | | 72306 |
| PERKINS, D.G. | 446625 | 68664 |
| PERRY, ALBERT G. | 356329 | 68812 |
| PERRY, CHARLES | 846741 | 58799 |
| PETERSEN, JAMES L | | |
| PETERS, LEROY W. | | 72307 |

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| PETERSON, HERB | 366831 | 69043 |
| PETERSON, MARK E. | 529768 | 68960 |
| PETERSON, MELVIN J. | | 84254 |
| PETERS, WALTER C., JR. | | 87388 |
| PETKO, JAMES G. | | 58804 |
| PETRITES, JOSEPH J., JR | 387795 | 69144 |
| PETRUTSAS, LEE S. | | 84259 |
| PETTERHOFF, R.K. | | 37719 |
| PETTIT, BRIAN D. | | 25092 |
| PETTIT, J | | |
| PEYMANI, GOLVERDI S. | | 69243 |
| PEYOU, ANTHONY H. | | 38365 |
| PHALEN, CHARLES W. | | 38366 |
| PHILIPP, THOMAS E. | | 46684 |
| PHILIPS, THOMAS R. | | 41893 |
| PHILLIPS, GEORGE W. | | 93732 |
| PHILLIPS, HAL W. | 647941 | 99638 |
| PHILLIPS, HENRY C. | 328138 | 69477 |
| PHILLIPS, ROBERT A. | 677633 | 69522 |
| PHILLIPS, TERRY E. | | 38909 |
| PHINNEY, JAMES H. | | 65702 |
| PHINNEY, R.A. | 435008 | 69545 |
| PILGER, JEFFREY | | |
| PINKERTON, KENT R. | 329532 | 69813 |
| PIPKIN, ROGER P. | 221994 | 69841 |
| PITSTICK, JOHN P. | | 46685 |
| PITTS, J.E. | 367714 | 69914 |
| PLESSNER, JOSEPH B. | 353888 | 70019 |
| POERSCHKE, JOED R. | | 17170 |
| POIRIER, NOEL A. | | 32422 |
| POLGARDY, JOSEPH R. | 238097 | 70158 |
| POLLITIER, RICHARD G. | 381582 | 70234 |
| POMPONIO, J.C. | 390286 | 70313 |
| PONDER, LAURANCE D. | 305607 | 70363 |
| POOLE, MINOR WALLY | | 40115 |
| PORTWOOD, RALPH L. | | 17193 |
| POSTI, PAUL J., JR. | | 72445 |

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| POTTER, MARTIN M. | 305615 | 70659 |
| POURBAYAT, SHAHROKH | | 74464 |
| POVILUS, WILLIAM R. | | 99462 |
| POWELL, DOUGLAS B. | | 58805 |
| POWELL, E.T. | 378190 | 70712 |
| POWELL, RAYMOND R. | | 72920 |
| POWERS, MARK T. | 433359 | 70738 |
| POWERS, RICHARD L. | 328146 | 70779 |
| PRADA, LUIS M. | | 93733 |
| PRATHER, JODY R. | | 70073 |
| PRESCOTT, LEO L. | | 72446 |
| PRICE, DALE K. | | 93734 |
| PRICE, RONALD J. | 540484 | 71008 |
| PRICE, STEVE W. | | 41896 |
| PRICE, W.T. | 406306 | 71009 |
| PRIEST, PETER D. | | 20780 |
| PRIJZ, FERDINAND P. | | 72447 |
| PRITCHARD, P.C. | 902684 | 71095 |
| PROBST, LLOYD J. | | 00676 |
| PROCTOR, REID R. | 417287 | 71183 |
| PROENZA, JERRY | | 65189 |
| PROUD, RAYMOND G. | 744755 | 71213 |
| PRUDHOMME, M.K. | 355651 | 71229 |
| PRUITT, WILLIAM H. | | 40116 |
| PTASCHEK, EDWARD D. | | 83347 |
| PURPURA, KENT E. | | 70655 |
| PUSEY, SAMUEL A., JR. | 128736 | 71525 |
| PUTONEN, LEONARD R. | 322057 | 71562 |
| QUEEN, JAMES C. | 353441 | 71675 |
| QUIGLEY, BRUCE D. | 446682 | 71669 |
| QUIGLEY, PETER D. | | 17194 |
| QUINN, FRANCIS J. | | 79513 |
| RABASA, MANUEL | | 79510 |
| RACHIS, GEORGE F. | | 65188 |
| RAFTEN, R.L. | 527879 | 71850 |
| RAGOZZINO, GERALD | | 84260 |
| RAGSDALE, JOHN W. | 329854 | 71886 |

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| RAHNER, JACKSON E. | | 58270 |
| RAJU, KANPUR V. | | 83349 |
| RAMAPRAKASH, TILAK S. | | 72308 |
| RAMELLI, THOMAS G. | | 20788 |
| RANDOLPH, JOHN D. | 186585 | 72164 |
| RANGE, JIM | 341636 | 72151 |
| RANSON, WILLIAM M. | | 69244 |
| RAO, NANDAN M. | | 72125 |
| RASMUSSEN, LARY L. | | 46929 |
| RAWLINGS, WALTER E. | 610329 | 72496 |
| RAWLS, FLETCHER H. | 274209 | 72504 |
| RAYBURN, H.C. | 322164 | 72540 |
| RAY, RICHARD L. | 927731 | 72570 |
| RAY, THOMAS D. | | 64135 |
| REAM, TERRANCE A. | | 65187 |
| REAVIS, CLIFFORD L. | | 72310 |
| REDDING, CARL J. | | 17195 |
| REDD, WARREN J., JR. | 372771 | 72837 |
| REECE, WILLIAM B. | 391722 | 72830 |
| REED, DONALD W. | | 41615 |
| REEH, CHARLES D. | 441709 | 72953 |
| REEP, STEPHEN M., III | 351718 | 72927 |
| REEVES, MICHAEL A. | | 32425 |
| REICHARD, MARK D. | | 45047 |
| REICHERT, V.P. | 494005 | 73080 |
| REIK, KARL M. | 349621 | 73182 |
| REILLY, EDWARD L. | | 43409 |
| REINHOLTZ, RONALD E. | 609750 | 73144 |
| REITAN, A.G., JR. | 325282 | 73197 |
| RESING, M.L. | 384628 | 73420 |
| RESLAN, GHASSAN M. | | 70074 |
| RESTIVO, JOHNNY D. | | 69343 |
| RESTUCCIA, PHILIP W. | | 72311 |
| REYNOLDS, JASON L. | | 70075 |
| RHEINTGEN, JAMES J. | | 25093 |
| RHODES, EVERETT S. | 233569 | 73562 |
| RHODES, JIMMY L. | | 93736 |

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| RICHARDS, F.L. | 319129 | 73649 |
| RICHARDS, KENNETH L. | 201731 | 73603 |
| RICHARDSON, PAUL A. | 228908 | 73666 |
| RICHART, H.M. | | 38908 |
| RICHEY, J. | | 79227 |
| RICKARD, DENNIS W. | | 41616 |
| RICKETS, ROBERT M., JR. | 244632 | 73755 |
| RICKS, ROBERT R. | | 15649 |
| RIGGS, NORMAN A. | 781393 | 15650 |
| RING, RUSSELL B. | | 72732 |
| RINSMA, EDDY J. | | 74465 |
| RIORDAN, RONALD C. | | 72886 |
| RITCHIE, CLINTON W. | | 17197 |
| RIVERA, GEORGE M. | | 93737 |
| RIVERA, STEVEN M. | | 41617 |
| ROARK, JOHN P. | | 99463 |
| ROBBINS, BARBARA A | 846527 | 72312 |
| ROBERTS, GORDON W. | | 46540 |
| ROBERTS, JEFFREY G. | | 70076 |
| ROBERTS, JOHN R., JR. | | 15651 |
| ROBERTSON, JAMES K. | | 72448 |
| ROBERTSON, PAUL B. | | 70083 |
| ROBERTS, REGINALD | | 93740 |
| ROBINSON, ALLEN W. | | 72449 |
| ROBINSON, DEAN B. | | 51486 |
| ROBINSON, RUSSELL D. | | 46541 |
| ROBINSON, WILLIAM J. | 541862 | 74946 |
| ROBINSON, WILLIAM J. | | 51565 |
| ROCCHETTI, ERNESTO G. | | 72525 |
| RODRIGUEZ, ANGEL L. | | 25094 |
| RODRIGUEZ, J. | 259903 | 75345 |
| RODRIGUEZ, VIRGIL J. | | 93741 |
| ROEDENBECK, ERWIN A. | | 99464 |
| ROGERS, CHARLES D., JR. | | 41619 |
| ROGERS, D.J. | 383695 | 75301 |
| ROGERS, WILLIAM F. | | 46542 |
| ROHALEY, JOSEPH E. | | 79730 |

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| ROHRBORN, ROBERT | 201699 | 75459 |
| ROHRER, WILLIAM | | 74466 |
| ROJAS, ALEXIS J. | | 46543 |
| ROJAS, ORLANDO A. | | 93742 |
| ROLLINGS, LYNN R | | 43410 |
| ROMAN, GEORGE C. | 234377 | 75630 |
| RONEMUS, JOHN W. | 408526 | 75642 |
| RONEY, DON G. | | 75639 |
| ROOSEVELT, ELWYN V. | 281105 | 75689 |
| ROSALY, CARLOS | 225029 | 75759 |
| ROSARIO, JOSE M. | | 46544 |
| ROSE, HOWARD H. | | 83264 |
| ROSENTHAL, E.P. | 228221 | 75845 |
| ROSS, B.J. | 397711 | 75957 |
| ROSS, CURTIS G. | | 20194 |
| ROSS, THOMAS D. | | 60321 |
| ROTH, GEORGE L. | 529818 | 75976 |
| ROWE, STEVE D. | 446690 | 76140 |
| RUBLE, BOBBY I. | 313320 | 76357 |
| RUBY, JESSE B. | | 72733 |
| RUDDER, BOBBY L. | | 70084 |
| RUFF, DONALD M. | | 99640 |
| RUGHANI, A | | 58991 |
| RUIZ, LUIS A. | | 45048 |
| RULE, DARRYL L | 616888 | 76488 |
| RUNYAN, MICHAEL D. | | 41894 |
| RUPERT, J.F., II | 434340 | 76499 |
| RUSAK, ERIC J. | | 83265 |
| RUSH, CHARLES P. | 333435 | 76515 |
| RUSHMAN, KEN S. | | 99465 |
| RUSS, C.G. | 234740 | 76571 |
| RUSSELL, ED, SR. | 092445 | 76531 |
| RUSSELL, EDWIN F., JR. | 333708 | 76537 |
| RUSSELL, JAMES V. | 169599 | 76565 |
| RUSSELL, JOHN A. | | 26259 |
| RUSSELL, WILLIAM A. | 437053 | 76608 |
| RUTHERFORD, DENNIS W. | | 99467 |

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| RUTHERFORD, WILLIAM JR. | | 79733 |
| RYBA, FRANK W. | | 76951 |
| RYDELL, G.V. | 297697 | 76953 |
| RYKERT, HARVEY W. | 418392 | 76976 |
| RYNGALA, K.L. | 528950 | 76888 |
| SABA, MICHAEL H. | | 93886 |
| SABELSAK, WILLIAM J. | 740266 | 68088 |
| SADR, S. (ALI) | 746354 | 77025 |
| SAGGAU, ROBERT J. | | 72526 |
| SALEEBY, KENNETH G. | | 87392 |
| SALIBA, BANIG N. | | 17528 |
| SALVATI, PATRICK P. | | 20195 |
| SAMILION, DALE L. | | 99642 |
| SANDERS, JOHN W. | 423327 | 77449 |
| SANDERSON, J.M., JR. | 187112 | 77426 |
| SANSONE, JOHN D. | | 52508 |
| SANTIAGO, STANLEY | 475368 | 77475 |
| SANTORO, DAVID L. | | 99469 |
| SARGEANT, J.S. | 497396 | 77574 |
| SASS, RICHARD A. | | 45049 |
| SAUER, DETLEF P. | 519488 | 77692 |
| SAUNDERS, WILLIAM, III | | 77682 |
| SAVAGE, DAVID H. | 323105 | 77731 |
| SANICKI, R.S. | | 77749 |
| SCARBROUGH, RICHARD G. | | 72921 |
| SCHANZLIN, DON | 456418 | 78177 |
| SCHAFER, W.W. | 346296 | 77966 |
| SCHEDEL, J.R. | 430835 | 78089 |
| SCHEIBLER, JAMES M. | 337212 | 78018 |
| SCHEYER, F.D. | 231142 | 78036 |
| SCHILLINGER, | | |
| SCHMIDT, CARLOS M. | 248864 | 78257 |
| SCHMIDT, DOYLE J. | | 46479 |
| SCHNEEMILCH, DAIN A. | 671883 | 78394 |
| SCHNURR, JACK C. | | 45051 |
| SCHRAG, JAMES A. | | 83267 |
| SCHREINER, G.H. | 349548 | 78547 |

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| SCHRENKEL, CHARLES, JR. | | 32428 |
| SCHRINER, D.O., JR. | 269712 | 78565 |
| SCHROLL, JOHN E. | 642389 | 78558 |
| SCHULTEIS, DALE H. | | 58808 |
| SCOTT, KARL A. | | 45052 |
| SCOTT, S.D. | 342469 | 77033 |
| SEARLS, R.R. | 446807 | 79262 |
| SEAMARD, ROBERT G. | 439703 | 79260 |
| SECKER, WILLIAM S., JR. | | 20199 |
| SECOR, E.F. | 398859 | 79255 |
| SEELEY, J.W. | 390062 | 79343 |
| SEFTON, REX L. | | 51891 |
| SEGARS, NELSON P. | 322156 | 79365 |
| SELF, GARY W. | 341594 | 79480 |
| SELLERS, PAUL A. | | 58809 |
| SELMAN | | |
| SELMAN, R.J. | 433409 | 75919 |
| SELTENRIGHT, RUSS | 528422 | 79523 |
| SEPEHRIZADEH, GHOLA R | 805036 | 58810 |
| SESSIONS, CARL E. | 231217 | 79688 |
| SESSUMS, SETPHEN E. | | 43412 |
| SESTER, RICHARD L. | 782714 | 17529 |
| SEWELL, HERBERT J., JR. | 398842 | 79767 |
| SHAFFER, SIMON | | 72527 |
| SHANAN, JACK H. | 236166 | 79873 |
| SHAMID, FEROZ | | 69354 |
| SHAIR, NOORULLAH | | 99592 |
| SHALONGO, DANIEL W. | | 41620 |
| SHARPE, DAVID F. | 333328 | 79968 |
| SHAVER, C.R. | 529313 | 79975 |
| SHAW, LINOR | | |
| SHAW, RICHARD L. | 349555 | 79997 |
| SHEA, J.M., JR. | 435107 | 80105 |
| SHEEHAN, FRED J. | | 79512 |
| SHELDON, RAYMOND M. | | 87394 |
| SHELLENBERG, WAYNE S. | | 15653 |
| SHEPARD, GARY | 530360 | 80334 |

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| SHEPARD, R.B. | 337220 | 80290 |
| SHEPHARD, JONNY M. | | 41120 |
| SHEPPARD, H.G. | 201491 | 80322 |
| SHERRY, EILEEN E. | | 84486 |
| SHIVERS, WALTER W. | 337733 | 80653 |
| SHLAPAK, GREGORY M. | 739870 | 80684 |
| SHLAPAK, MILTON W. | 337840 | 80685 |
| SHOEMAKER, PAUL E. | | 45055 |
| SHOEMAKER, WILLIAM R. | | 72527 |
| SHORE, GERALD E. | | 25095 |
| SHOULARS, RONALD W. | | 69345 |
| SHOUN, JOHN W. | 440610 | 80778 |
| SHRIVER, LARRY L. | 631986 | 80840 |
| SHUDTZ, C.L. | 358648 | 80885 |
| SHUEY, BRUCE E. | | 45056 |
| SIDKY, HUSSEIN H. | 435701 | 80974 |
| SIEGEL, WILLIAM A. | | 26261 |
| SIENNICKI, GERALD | 322149 | 81018 |
| SIGLER, GEORGE E. | | 57504 |
| SILVA, IRVING J. | | 64821 |
| SILVER, JOHN R. | | 65706 |
| SILVIS, R.C. | 198671 | 81094 |
| SIMMONS, GARY W. | | 20196 |
| SIMMONS, JAMES | | 65181 |
| SIMMS, THOMAS L. | | 68194 |
| SIMONI, JERRY L. | 375477 | 81359 |
| SIMPSON, L.R. | 396598 | 81403 |
| SIMPSON, ROBI R. | | 57505 |
| SIMS, CURTIS | 751230 | 81187 |
| SIMISCALCHI, MICHAEL A. | | 93889 |
| SIRMANS, J.W. | 305631 | 81502 |
| SITTA, DONALD C. | | 79514 |
| SKINNER, J.J. | 404244 | 81672 |
| SKIRKO, JOANNE | | 15654 |
| SLATON, CHARLES S. | | 41121 |
| SLAYTON, ROBERT S. | | 41122 |
| SLEIGHT, EDWARD W. | 322875 | 81855 |

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| SMAIL, KEMMACHE P. | | 46480 |
| SMITH, A.C. | 242289 | 82118 |
| SMITH, CHARLES, E. | 443473 | 83248 |
| SMITH, DAVID L. | 332866 | 82213 |
| SMITH, DONALD E. | | 57507 |
| SMITH, EUGENIA M. | | 58811 |
| SMITH, GEORGE M. | | 73066 |
| SMITH, GLEN L. | | 17220 |
| SMITH, JACK G. | 450221 | 82662 |
| SMITH, LORIN | | 51897 |
| SMITH, NICHOLAS R. | | 87498 |
| SMITH, RICHARD D. | | 26262 |
| SMITH, RONALD J. | | 87499 |
| SMITH, RONALD E. | | 26263 |
| SMITH, TOM | | 51466 |
| SMITH, WAYNE | 828467 | 82528 |
| SMELLGROVE, ROBERT T. | | 45057 |
| SODERQUIST, CHARLES W. | 761544 | 83472 |
| SOFFEREIN, JEFFREY L. | | 99598 |
| SOGN, HAROLD M. | | 51491 |
| SOLBERG, SEVEN O. | | 83268 |
| SOOKNANAN, PUNCHAN | | 99593 |
| SORENSEN, JAMES T. | | 17221 |
| SOTTILO, CHARLES A. | 312413 | 83740 |
| SOUDERS, JOHN E. | 441733 | 83802 |
| SOUTHERLAND, GROVER R. | | 41123 |
| SPARKS, RONALD T. | | 99471 |
| SPARROW, LLOYD K. | | 15655 |
| SPARROW, T.C. | 349571 | 83862 |
| SPEISMAN, JOHN | | 17533 |
| SPENCER, JOHN F. | | 45058 |
| SPENCE, WILLIAM | 580100 | 83977 |
| SPIEKER, S.G., JR. | 247544 | 84133 |
| SPILLMAN, HARRY L. | 332841 | 84159 |
| SPILLMAN, KEITH T. | 629899 | 84160 |
| SPITLER, CHARLES A. | 353920 | 84167 |
| SPORT, WILLIAM A. | 366815 | 84242 |

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| SPOSITO, JAMES D. | | 93890 |
| SPRIGMAN, A. EDMUND | 329607 | 84723 |
| SPURLOCK, JERRY D. | | 93738 |
| ST. PHILIP, C.S. | 235978 | 86103 |
| STACHIW, THOMAS S. | 512541 | 84828 |
| STANDISH, RICHARD W. | 767392 | 84579 |
| STAMFORD, HENRY K. | | 45059 |
| STANSBURY, TONY W. | | 51493 |
| STANTON, D. | | 79564 |
| STANTON, JAMES R. | | 41236 |
| STANTON, JUDITH | | 64122 |
| STARK, DENNIS W. | | 99472 |
| STEELE, LEE P. | 544189 | 84981 |
| STEPHENS, BILLY | 222141 | 85156 |
| STEPHENS, GARRY W. | | 57509 |
| STEPHEN, WILLIAM P. | 788679 | 85196 |
| STEVENS, BYRON | | 51890 |
| STEVENS, ROMAN L. | 503250 | 85380 |
| STEWARD, DONALD E. | 441402 | 85467 |
| STEWART, BRETT M. | | 51468 |
| STEWART, CHARLES T. | | 26265 |
| STEWART, MONTY M. | | 29605 |
| STEWART, WAYNE M. | 373555 | 85593 |
| STIFEL, A.C., III | 373373 | 85682 |
| STILES, JAY D. | | 57510 |
| STILLINGS, CLAYTON | | 20198 |
| STOCKTON, RICHARD L. | | 41124 |
| STODDARD, GEORGE P. | 237818 | 85919 |
| STODDARD, SCOTT G | | 72487 |
| STONE, A.C. | 372763 | 85967 |
| STONE, CARY A. | 612523 | 85923 |
| STONE, EDWARD, E. | 237826 | 85905 |
| STONE, JOHN F. | | 17534 |
| STONE, NEIL | 289447 | 85949 |
| STONE, RAY G. | 279596 | 85900 |
| STORN, SPERRY C. | | 20192 |
| STOW, C.E. | 339283 | 86096 |

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| STRADER, JAMES R. | 238790 | 86115 |
| STRADLEY, K.W. | 357046 | 86219 |
| STRADTHAGEN-IC, FRANK | | 71304 |
| STRAESSLE, GREG C. | 546614 | 86108 |
| STRAUSS, R.J., JR. | | 83269 |
| STREET, ROBERT B., JR. | 591594 | 86203 |
| STRONG, DONALD B. | 464123 | 86323 |
| STROUP, ROBERT L | | 95117 |
| STRUS, MICHAEL W | | 69346 |
| STUPKA, OTTO J. | 313338 | 86426 |
| STUTEVILLE, W.F. | 344614 | 86438 |
| SULLIVAN, ENNIS | | 79527 |
| SULLIVAN, J.B., JR. | 446740 | 86566 |
| SULLIVAN, J.L. | 376087 | 86583 |
| SULLIVAN, JOHN K. | | 70096 |
| SULLIVAN, ROBERT F. | 238071 | 86578 |
| SURIANO, PHILIP | | 79727 |
| SUTTA, PAUL B. | 530394 | 86677 |
| SWAIN, JAMES W. | 434662 | 86803 |
| SWANSON, DAVID V. | 545665 | 86799 |
| SWARTZFAGER, PAUL G. | | 98492 |
| SWARTZ, JAMES | | 79901 |
| SWORD, GARY E. | | 87502 |
| SYKES, RUSSELL E. | 273854 | 87031 |
| SYLVIA, JOSEPH H. | | 87503 |
| SYMAN, JOHN | 195875 | 87077 |
| TABARES, F.G. | | 83270 |
| TADKEN, DON L. | 209114 | 87133 |
| TAMA, GARY | | |
| TALTON, WILLIAM G. | 283606 | 87241 |
| TANSKI, J W | 390054 | 87365 |
| TARTE, LYLE L. | | 70097 |
| TATE, GEORGE H | 321356 | 87480 |
| TATE, JOSEPH F. | | 41976 |
| TAVARES, WILLIAM | 353490 | 87549 |
| TAYLOR, CRAIG A. | | 29606 |
| TAYLOR, D.H. | 311795 | 87568 |

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| TAYLOR, DAVID A. | | 73067 |
| TAYLOR, GLYNN M. | 423467 | 87683 |
| TAYLOR, JAMES M. | 322222 | 87637 |
| TAYLOR, JAMES R. | | 87504 |
| TAYLOR, MICHAEL J. | | 17535 |
| TAYLOR, ROBERT A. | 322214 | 87659 |
| TAYLOR, THOMAS L., III | 446849 | 87720 |
| TEAGUE, RICK | | 79723 |
| TELLECHEA, CHARLES M., JR | | 51915 |
| TERKILDSEN, CARLEF A. | 329631 | 88187 |
| TESSENYI, THOMAS B. | | 45060 |
| TEVIS, TRACY J. | | 51494 |
| TEW, B.D. | 355750 | 88264 |
| THEAKSTON, PETER A. | 353508 | 88352 |
| THEIS, RICHARD L. | | 69347 |
| THEOFILATOS, SPERO | | 69348 |
| THETFORD, WILLIAM R. | | 17536 |
| THOMAS, FRANTZ | | 88451 |
| THOMAS, MICHAEL R. | | 41125 |
| THOMAS, ROBERT M. | 627158 | 88536 |
| THOMAS, STEPHAN | | 17225 |
| THOMAS, W.J. | 269704 | 88515 |
| THOMPSON, J.W., II | 577270 | 88889 |
| THOMPSON, JOHN T. | | 29607 |
| THOMPSON, RICHARD L. | | 43922 |
| THOMPSON, RICHARD L. | | 51495 |
| THOMPSON, ROGER L. | | 41977 |
| THOMPSON, STEPHEN C. | 191965 | 88887 |
| THOMPSON, WALTER L. | 395327 | 88903 |
| THOMSON, J.B. | 237859 | 88825 |
| THORBJORNSSON, UNDAR | | |
| THORTON, KENNETH A. | 319616 | 89214 |
| THRUSTON, EDWARD F. | | 65184 |
| THURMAN, LAWRENCE E. | | 41978 |
| TIAINEN, JOUNI J. | | 72488 |
| TIBBETS, JOHN W. | 346254 | 89376 |
| TIDWELL, JEFFREY L. | | 41979 |

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| TILLEY, DONALD | 528984 | 89470 |
| TILLEY, MARSHALL D. | 442244 | 89494 |
| TILLIS, JAY W | 353324 | 89477 |
| TIPPETT, KIM T. | | 72489 |
| TODD, KENNETH D. | | 41980 |
| TOMASZEWSKI, JAMES | | 43923 |
| TOMLINSON, WOODROW W. | | 51497 |
| TOOLE, OLIVER A. | 390260 | 89875 |
| TOUGAS, GARY | 754432 | 89741 |
| TOWNLEY, JAMES R. | 392217 | 89994 |
| TRAUGER, DON W. | 277855 | 90148 |
| TREADWELL, WILLIAM T, III | | 71310 |
| TRENHOLM, AL L. | 234369 | 90224 |
| TRICE, C.V. | 237925 | 90272 |
| TRIGO, J.A. | 237982 | 90261 |
| TRIMBLE, J.D. | 367698 | 90276 |
| TRIMMEL, HUBERT | | 51562 |
| TRIPP, D. | | 40119 |
| TROOST, RONALD | 227249 | 90313 |
| TROUT, JOHN P. | | 99474 |
| TUCKER, D. | | 79111 |
| TUCKER, JOHN A. | | 43924 |
| TUCKER, TERRY T. | | 99595 |
| TUFTS, ROBERT G. | 311753 | 90513 |
| TURMAN, J.B. | 446823 | 90724 |
| TURNER, J. | | 41126 |
| TURNER, WAYNE S. | | 70098 |
| TURNIPSEED, JOE D. | 440123 | 90720 |
| TYLER, ROBERT M. | 441741 | 90821 |
| TYREE, WILLIAM M. | | 93895 |
| ULLINSKI, S | | |
| UMBEL, RICHARD P. | 538538 | 90979 |
| UNGER, R.L. | 435164 | 91008 |
| URBASZEWSKI, KATHRYN L. | | 51923 |
| URCINOLE, JAMES | | 17609 |
| URSO, M.T. | 450262 | 91052 |
| UTLEY, D.C. | 389726 | 91064 |

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| VAN BOOSEAR, LEON L. | 440560 | 91351 |
| VANBAALEN, PAUL H. | | 29608 |
| VANBEUREN, MARLENE | | 65183 |
| VANDERKAMP, JAMES E, JR | 629519 | 91286 |
| VANDYCK, WILLIAM G. | | 20777 |
| VANEK, ALEXANDER G. | | 69349 |
| VARA, R.W. | 373530 | 91401 |
| VANSENDEN, ARNOLD V. | | 17226 |
| VAUGHN, MICHAEL J. | 346247 | 91480 |
| VAUGHN, STEPHEN D. | 614032 | 91440 |
| VAUTIER, JIM | | 29620 |
| VAZQUEZ, DANIEL, III | | 51510 |
| VELASQUEZ, JUAN | 227314 | 91589 |
| VERGASON, DAN | | 51945 |
| VERMILION, RICHARD D. | | 99475 |
| VESTY, C.M. | 182728 | 91711 |
| VETROSKY, C.D. | 211037 | 91741 |
| VICE, G.W. | 348847 | 91758 |
| VIDRINE, ROBERT P. | | 41127 |
| VIETMEYER, P.H. | 414276 | 91785 |
| VILLANUEVA, R. | 234989 | 91733 |
| VILLERS, DAVE L. | 356345 | 91847 |
| VINCENT, B.B. | 903302 | 91791 |
| VINCENT, CHARLES E. | | 46930 |
| VOEPEL, W.C. | 294132 | 92067 |
| VOGT, THOMAS C. | | 29620 |
| VOHRA, PANKAJ P. | | 79712 |
| VONKLEEK, JOHN S. | 353839 | 92025 |
| VONKREBS, DAVID M. | | 88104 |
| VOUDY, J.E. | 433458 | 92135 |
| VRECHEK, J.C. | 311613 | 92161 |
| WADE, DEBORAH A. | | 51514 |
| WADE, PAUL E. | | 92224 |
| WAGGONER, ADRIAN H. | | 41128 |
| WAGGONER, WARREN D. | | 57511 |
| WAID, DONALD P. | 438507 | 92336 |
| WALBORN, JERRY D. | 521237 | 92397 |

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| WALBY, THOMAS F. | 353557 | 92365 |
| WALDER, GLEN W. | | 70099 |
| WALDREN, THOMAS M. | | 98481 |
| WALDRON, JAMES E. | | 51927 |
| WALKER, D.F. | 384651 | 92411 |
| WALKER, TONY W. | 395145 | 92500 |
| WALLCH, S.E. | 439778 | 92787 |
| WALLER, GWEN R. | 770453 | 92819 |
| WALLS, DAVID M. | | 46931 |
| WALTHER, F.O. | 457879 | 92645 |
| WALTON, DOUGLAS L. | 435123 | 92978 |
| WALTON, MICHAEL R. | | 43926 |
| WANGCHAROEN, CHARL M. | | 98493 |
| WARDE, IVETTE C. | | 17256 |
| WARD, JOHN E. | 372722 | 93107 |
| WARD, L.R. | 778373 | 93032 |
| WARD, THOMAS | | |
| WARNOCK, JAMES C. | | 51536 |
| WARREN, D.E. | 346239 | 93130 |
| WARREN, GARY G. | | 29615 |
| WARREN, JAMES M. | 80348 | |
| WARREN, RANDY R. | | 73068 |
| WATERFIELD | | |
| WATERSTREET, MARK A. | | 88106 |
| WATKINS, PHILIP A. | 328518 | 93546 |
| WATSON, MICHAEL D. | 508408 | 93607 |
| WATSON, WILLIAM E. | | 70100 |
| WATT, ALLEN K. | 416560 | 93630 |
| WATTERS, KENNETH K. | | 17257 |
| WEATHERFORD, MICHAEL S. | | 46481 |
| WEATHERS, LAWRENCE W. | | 51538 |
| WEAVER, KENNETH E. | | 41129 |
| WEBB, BRIAN R. | | 43927 |
| WEBBER, CHARLES W. | 348631 | 93996 |
| WEBB, MATTHEW M. | | 43028 |
| WEBER, DUDLEY B. | | 70041 |
| WEBER, MICHAEL E. | | 64136 |

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| WEBER, WILLIAM J. | | 43929 |
| WEGLARZ, MICHAEL | 612580 | 94155 |
| WEGMAN, JAMES M. | 443077 | 94161 |
| WEIKSNER, RICHARD J. | | 88107 |
| WEIR, J.R. | 383737 | 94283 |
| WEISBROD, W.E. | 328625 | 94260 |
| WEITZEL, LAURIE D. | | 17555 |
| WELLER, A.E. | 383745 | 94402 |
| WELLER, LARRY E. | | 29616 |
| WELLMAN, M.A. | 357707 | 94405 |
| WELLS, GAILYN M. | 525840 | 94395 |
| WELLS, LARRY C. | 530642 | 94453 |
| WELLS, VAUGHAN L. | | 40117 |
| WENGERT, R.D. | 333559 | 94610 |
| WESTBY, DOROTHY C. | | 46483 |
| WEST, DWAYNE F. | | 80341 |
| WEST, JAMES B. | 436220 | 94782 |
| WESTON, PAUL D. | 289975 | 94760 |
| WEST, PETER | | 70042 |
| WESTPHALL, R.C. | 433680 | 94780 |
| WHALEY, G. ERIC | | 65186 |
| WHEELER, DAVID F. | | 70043 |
| WHIDDON, EDWARD H. | 351536 | 95152 |
| WHISENANT, MICHAEL K. | | 65708 |
| WHITAKER, ROBERT B. | 430751 | 95188 |
| WHITEAKER, J.D. | 322172 | 95185 |
| WHITE ARNOLD L. | | 43930 |
| WHITE, ROBERT P. | 332809 | 95360 |
| WHITE, ROBERT L. | 440552 | 95396 |
| WHITE, W.A. | 902783 | 95361 |
| WHITLEY, DONALD | | 51947 |
| WHITMAN, DAVID L. | 319582 | 95601 |
| WHITNEY, RICHARD A. | | 41130 |
| WHITTEMORE, JERRY W. | | 98482 |
| WHITTEN, J.L. | | 98035 |
| WIDENER, STEVEN D. | | 72601 |
| WIENBARG, F.W., JR. | 345335 | 95841 |

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| WIGHT, T.R. | | 84251 |
| WILKE, JAMES R., JR. | 390252 | 95958 |
| WILLCOX, G.P. | 435966 | 96104 |
| WILLIAMS, AUBRY L. | | 40118 |
| WILLIAMS, DAVID | | 52210 |
| WILLIAMS, IVAN D. | | 72602 |
| WILLIAMS, JACK D. | 173872 | 96304 |
| WILLIAMS, JAN C. | 420968 | 96388 |
| WILLIAMS, JOHN R. | | 65180 |
| WILLIAMS, MARK A. | 741777 | 96361 |
| WILLINGHAM, ROBERT B. | 324814 | 96735 |
| WILLINGHAM, WINBORN B. | | 69351 |
| WILLIS, HERBERT P. | 442731 | 95743 |
| WILLIS, JAMES R. | 099259 | 96745 |
| WILLS, CHARLES H. | | 58812 |
| WILLS, DENNIS H. | 271825 | 96781 |
| WILLS, JOHN MICHAEL | | 41982 |
| WILLSON, T.L. | 342824 | 96780 |
| WILSON, HUGH A. | 435065 | 96994 |
| WILSON, J.S. | 315952 | 96882 |
| WILSON, W.F. | | 84252 |
| WINGATE, FRANK M., JR. | | 70656 |
| WINGATE, WESLEY A. | 300533 | 97161 |
| WINKLER, FRANK K. | | 44035 |
| WINTERRATH, JOSEPH R. | | 69352 |
| WIREN, JOHN C. | | 65785 |
| WISE, BRETT O. | | 43391 |
| WITT, DAVID C. | | 29618 |
| WITTFOTH, JEROME S. | | 71548 |
| WITTNER, MARK E. | | 64108 |
| WOHLHUETER, JAMES A. | | 93896 |
| WOOD, BARRY L. | | 43032 |
| WOOD, CHARLES L. | | 70044 |
| WOOD, DONALD R. | | 86139 |
| WOOD, GARY S. | | 65787 |
| WOODHAM, J.H. | 451872 | 97771 |
| WOODS, ROBERT O. | | 98484 |

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| WOOD, STEVEN C. | 453845 | 45958 |
| WOOD, T.R. | 302109 | 97653 |
| WOOTEN, GEOFFREY M. | 642397 | 98004 |
| WORMUTH, THOMAS F. | | 98485 |
| WORONOFF, LAWRENCE S. | | 71306 |
| WOULAS, VASILIOS BILL | | 99579 |
| WRIGHT, DEAN S. | 327353 | 98291 |
| WRIGHT, ELDON L. | | 70045 |
| WYATT, JOHN W. | 315945 | 98470 |
| YANDELL, J.N. | 138156 | 98697 |
| YANES-VIDAL, MANUEL | 280040 | 98691 |
| YATES, GARY W. | | 71309 |
| YATES, JERRY | | 72605 |
| YEATER, D. | | 84253 |
| YERKES, BRUCE W. | | 43933 |
| YERSAK, RICHARD J. | 443531 | 98815 |
| YOE, ROBERT B. | | 98889 |
| YOUNGBERG, JOEL B. | | 98486 |
| YOUNG, C.M., JR. | 227322 | 98961 |
| YOUNG, I.F. | 407122 | 99000 |
| YOUNG, MICAHEL A. | 610816 | 98999 |
| YOUNGS, DANIEL B. | | 72606 |
| ZAAROUR, ABDO T. | | 98487 |
| ZAHNLE, OWEN G | | 98494 |
| ZAMARY, KENNETH J. | | 64110 |
| ZAMORA, IVAN | | 70905 |
| ZENG, ROBERT E. | 530451 | 99401 |
| ZUENE, ROGER D. | 576439 | 99454 |
| ZINGER, PHILIP H | | 72729 |
| ZIOBRO, THOMAS J. | 353581 | 99487 |
| ZIPSE, RICHARD L. | 222893 | 99628 |
| ZOGLEHAN, MICHAEL W | | 51541 |
| ZOLCZYNSKI, MICHAEL A | | 52507 |
| ZULASKI, MICHAEL J | | 17556 |

# APPENDIX H

IN THE
**United States Court of Appeals**
FOR THE ELEVENTH CIRCUIT

CASE NO. 97-5587

LARRY DUNN, ET AL.
*Plaintiffs/Appellants,*

*vs.*

AIR LINE PILOTS ASSOCIATION, ET AL.
*Defendants/Appellees.*

On Appeal from the United States District Court
Southern District of Florida

## BRIEF OF DEFENDANTS-APPELLEES AIRLINE PILOTS ASSOCIATION,

## J. RANDOLPH BABBITT AND HENRY A. DUFFY

James L. Linsey
Russell Hollander
Peter D. DeChiara
COHEN, WEISS AND SIMON
330 West 42nd Street
New York, New York 10036-6976
(212) 563-4100

* * *

### C. The Decision to Continue the Strike

Despite the strike's early success, Eastern managed to resume a portion of its operations with crossover pilots (including Group II and III plaintiffs) and new hire permanent replacement pilots (including Group II plaintiffs). ACC3-337 ¶ 18. By August 7, 1989, 336 crossover pilots (including 139 plaintiffs) had returned to work for Eastern, and Eastern had hired an additional 831 new hire trainees (including 58 plaintiffs). *Id.*, Ex. 11. Eastern had also substantially reduced its pilot staffing requirements by selling operations, leasing, and shrinking its overall operations. *Id.* ¶ 19.

Under these circumstances, the pilot group commenced an internal debate in the summer of 1989 over whether to continue the pilot sympathy strike. To resolve this internal debate, the Eastern MEC placed the future of the strike on the agenda for its August 1989 meeting and urged all Eastern pilots to maintain the picket lines pending a final determination by the Eastern MEC. On July 28, 1989, the MEC strike operations committee reported to all pilots that:

> Our MEC will reconvene Tuesday, Aug. 1 . . . [to] hear updates on all activities and events affecting our sympathy strike and give direction about our future course . . .
>
> The most important thing is that, whatever we do, we do it together – not as lone individuals or small groups heading off on their own. No matter what path we follow, acting in unity is the only way [we] can protect ourselves.

ACC3-337, Ex. 17 at 1. To discourage pilots from returning to work on *an individual basis*, moreover, the strike operations

* * *

concerning the future of the strike. ACC3-337, Exs. 23-24; *see* ACC3-343 (Dunn 304-05; O'Neill II 81-82; Landa 58; Lynn 32). At the conclusion of this debate, the Miami-based pilots voted overwhelmingly, by a show of hands, to continue the strike. R13-345 (Bavis 132); ACC3-337 Exs. 23-24. From August 6th through 9th, ALPA held similar meetings at the other pilot communication centers throughout the Eastern system. ACC3-337 at ¶ 23 & Exs. 24-27; R13-345 (Bavis 131-32; Breen 126-27); ACC3-343 (Donovan 67; Milanette 68-69; Whitaker 50; Lynn 38). At the conclusion of each of these meetings, the pilots at each meeting, with one exception, voted overwhelmingly to continue the pilot strike. *See* ACC3-337, Ex. 23.[8]

The pilots' overwhelming resolve to remain on strike was widely reported in the media and internal ALPA communications. On August 8, 1989, for instance, the *Atlanta Constitution* reported:

> Eastern Airlines pilots in Atlanta sent a strong message to union leaders Monday night that

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[8] The exact votes were as follows: Atlanta (493 to 121 in favor of continuing the strike, with 20 abstentions); Washington, D.C. (102 to 20); Tampa (31 to 8); Boston (60 to 23); New York (93% to 7%). *See* R13-344, Ex. 319 at 2; ACC3-343 (Milanette 68-70); ACC3-337, Exs. 24, 39. Only one small communication center in Danbury, Connecticut voted to return to work. *Id.*, Ex. 26.

> they wanted to continue their 5 month-old strike against airline boss Frank Lorenzo.

* * *

Pan Am. In each case, the affected MEC and ALPA's President made the decision to initiate the sympathy strikes; none was authorized or initiated by a membership vote. *See* ACC2-336 ¶¶ 13-14; *see also* R13-345 (Bavis 129-31 (citing prior ALPA sympathy strikes not accompanied by membership balloting)).

Article IV, Section 2(b) of ALPA's Constitution and By Laws, cited by plaintiffs, merely states the procedures that ALPA must follow *if* ALPA chooses to take a strike vote. The provision makes no reference to "sympathy" strikes, and it nowhere states that MECs are required to conduct a membership vote in deciding whether to call a sympathy strike. Accordingly, while ALPA typically (but not always) utilizes these procedures to conduct membership votes in *primary* economic strikes, *see* ACC2-336 ¶ 15, ALPA has explicitly interpreted and applied its Constitution and Strike Policy to authorize *sympathy* strikes without a membership vote. R13-345 (Babbitt 11, 32-33; Bavis 33, 130; Duffy 51); *see also* ACC2-336 ¶¶ 11-15.[15]

ALPA's longstanding interpretation of its own governing documents in connection with its Constitution and Strike Policy is entitled to considerable judicial deference, subject to judicial review only if "patently unreasonable" or adopted in bad

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[15] The distinction between a sympathy strike and primary strike is clear: the former supports a sister union's picket line, while the latter is in support of the union's own bargaining demands on the employer. *See Buffalo Forge Co. v. United Steelworkers*, 428 U.S. 397, 407-08 (1976).

* * *

granted the ALPA defendants summary judgment on his defamation claim.[26]

## CONCLUSION

For the foregoing reasons, the summary judgment of the district court should be affirmed in its entirety.

Dated: July 13, 1998

Respectfully submitted,

/s/ James L. Linsey
James L. Linsey
Russell Hollander
Peter D. DeChiara
COHEN, WEISS and SIMON
330 West 42nd Steet
New York, New York 10036
(212) 563-4100

Attorneys for Defendant
Air Line Pilots Association,
Henry A. Duffy and
J. Randolph Babbitt

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[26] Finally, Norman's argument that the district court failed to provide him with the notice required by Federal Rule of Civil Procedure 56(c) and *United States v. One Colt Python .357 Cal. Revolver,* 845 F.2d 287 (11th Cir. 1988), Norman Br. 13, fails because the court served such a notice upon his then counsel on May 24, 1996. *See* R14-373. Norman cites to no authority that would have required the court to provide him with a second such notice after he became *pro se* on June 16, 1997. *See* R16-438.

## APPENDIX I

### Plaintiff's Exhibit 18

EAL MEC
Air Line Pilots Association
201 Madeira Avenue
Coral Gables, FL 33134

December 5, 1989

Mr. Pat Murphy, Chairman
ALPA Hearing Board
Air Line Pilots Association
1625 Massachusetts Ave., NW
Washington, D.C. 20036

Dear Chairman Murphy:

The EAL MEC, by resolution, has directed that Article VIII charges be brought against J. J. Bavis for his participation in the following transgressions:

1. Willful violations of the ALPA Constitution and By-laws.
2. Disobeying or failing to comply with a decision of the Master Executive Council.
3. Assisting an airline during a period when the members of this association were on strike against such airline.
4. Acting in a manner to circumvent or interfere with collective bargaining between the Association and employer or with existing collective bargaining agreements.
5. Doing any act contrary to the best interests of the Association or its members.

On September 7, 1989, the EAL MEC recalled its Chairman, J. J. Bavis. This was in reaction not merely to his unsatisfactory performance during the EAL Pilots Sympathy Strike, but due also to a perceptable sequence of actions by the Chairman that resulted in severely undermining the strike efforts and the expressed desires of the MEC. Briefly:

On June 16, 1989, J. J. Bavis made statements on a Strike Operations Conference Call that resulted in forty-five (45) striking pilots crossing the picket line. On August 6, 1989, Captain Bavis, while participating in a road show made such deleterious remarks in reference to the Sympathy Strike that over 450 pilots crossed the picket line. The effect of his statements was so devastating that the event became known as Black Sunday. As a result, Frank Lorenzo was able to gain the critical number of pilots that he needed. This was a crucial juncture in the strike.

On September 9, 1989, two days after Captain Bavis' recall, Vice Chairman R. Wright informed the MEC of a meeting that was held at the Canterbury Hotel on June 13, 1989. At this meeting, without the knowledge of the MEC, J. J. Bavis participated in discussions that proposed and carried out certain actions to end the Sympathy Strike. Revelations of this meeting added further clarity to the sequence of events that transpired up to and including Black Sunday and served to underscore the willful aspect of Captain Bavis' transgressions and the conspiratorial nature of his actions – actions that bypassed the authority and the resolve of the EAL MEC and totally undermined the efforts of the striking pilots.

It is requested that these charges be heard by the ALPA Hearing Board in the first instance.

Sincerely,

/s/ C. H. Copeland
C. H. Copeland
Master Chairman, EAL MEC

CHC/lmh

cc: J. J. Bavis
Larry Schulte

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EAL MEC
Air Line Pilots Association
201 Madeira Avenue
Coral Gables, FL 33134

December 5, 1989

Mr. Pat Murphy, Chairman
ALPA Hearing Board
Air Line Pilots Association
1625 Massachusetts Ave., NW
Washington, D.C. 20036

Dear Chairman Murphy:

The EAL MEC, by resolution, has directed that Article VIII charges be brought against J. J. Bavis for his participation in the following transgressions:

1. Willful violations of the ALPA Constitution and By-laws.
2. Disobeying or failing to comply with a decision of the Master Executive Council.
3. Assisting an airline during a period when the members of this association were on strike against such airline.
4. Acting in a manner to circumvent or interfere with collective bargaining between the Association and employer or with existing collective bargaining agreements.
5. Doing any act contrary to the best interests of the Association or its members.

On September 7, 1989, the EAL MEC recalled its Chairman, J. J. Bavis. This was in reaction not merely to his unsatisfactory performance during the EAL Pilots Sympathy Strike, but due also to a perceptable [sic] sequence of actions by the Chairman that resulted in severely undermining the strike efforts and the expressed desires of the MEC. Briefly:

On June 16, 1989, J. J. Bavis made statements on a Strike Operations Conference Call that resulted in forty-five (45) striking pilots crossing the picket line. On August 6, 1989, Captain Bavis, while participating in a road show made such deleterious remarks in reference to the Sympathy Strike that over 450 pilots crossed the picket line. The effect of his statements was so devastating that the event became known as Black Sunday. As a result, Frank Lorenzo was able to gain the critical number of pilots that he needed. This was a crucial juncture in the strike.

On September 9, 1989, two days after Captain Bavis' recall, Vice Chairman R. Wright informed the MEC of a meeting that was held at the Canterbury Hotel on June 13, 1989. At this meeting, without the knowledge of the MEC, J. J. Bavis participated in discussions that proposed and carried out certain actions to end the Sympathy Strike. Revelations of this meeting added further clarity to the sequence of events that transpired up to and including Black Sunday and served to underscore the willful aspect of Captain Bavis' transgressions and the conspiratorial nature of his actions – actions that bypassed the authority and the resolve of the EAL MEC and totally undermined the efforts of the striking pilots.

It is requested that these charges be heard by the ALPA Hearing Board in the first instance.

Sincerely,

/s/ C. H. Copeland
C. H. Copeland
Master Chairman, EAL MEC

CHC/lmh

cc: J. J. Bavis
Larry Schulte

## APPENDIX J

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 91-2679-CIV-DAVIS

LARRY DUNN, et al.,

Plaintiffs

vs.

AIR LINE PILOTS ASSOCIATION, et al.,

Defendants.

JURY TRIAL DEMANDED

## THIRD AMENDED AND SUPPLEMENTAL COMPLAINT

Plaintiffs sue Defendants and respectfully state:

### Jurisdiction & Venue

1.A. The jurisdiction of this Court is invoked pursuant to Title 28 *United States Code* § 1331 and pendent jurisdiction.

1.B Venue in this District is proper pursuant to Title 28 *United States Code* § 1391(b) in that a substantial part of the events or omissions giving rise to the claims occurred within this District and Defendant Air Line Pilots Association may be found in this District.

### Parties

2. Plaintiffs listed on Schedule A were employed by Eastern Air Lines, Inc. as flight deck operating crew

members during the period March 1, 1989 to January 18, 1991 and were either active members of or paid dues to and were represented by Air Line Pilots Association.

3. Defendant Air Line Pilots Association ("ALPA") was and is an unincorporated association and labor organization representing flight deck operating crew members employed by air carriers with whom collective bargaining agreements existed or exist including Eastern Air Lines, Inc. ("EAL").

4.A. Defendants Henry A. Duffy and E. Randolph Babbit were Presidents of Defendant ALPA from January 1983 through December 1990 and January 1991 to the present time respectively and Defendant Babbit was Executive Administrator of Defendant ALPA during Defendant Duffy's term as President.

4.B. Defendant C.H. Copeland acted as Chairman of Defendant ALPA's EAL Master Executive Council ("MEC") from September 5, 1989 to in or about 1992.

4.C Defendants Edward J. Breen, Lewis Baldwin, and Gregg Petachenko were all of the members of Defendant ALPA's EAL Strike Committee and Communications Committee from March 1989 to in or about 1992.

## Allegations Relevant To Several Claims For Relief

5. ALPA's Constitution & By-Laws at Article X and its Membership Policy Manual relevantly provide that the President

> "shall be the Chief Executive and Administrative Head of [ALPA] . . . supervise [its]

> affairs . . . be responsible for and supervise the managerial functions within [ALPA] . . . serve as Chairman of the Board of Directors, the Executive Board and the Executive Committee"

and

> "as the highest elective officer of ALPA shall be the final arbitrator concerning items not covered by Board of Directors policy."

6. ALPA's Constitution & By-Laws at Article IV establishes a Master Executive Council ("MEC") for each air carrier for whom ALPA is the bargaining representative which

> "shall function as coordinating Council for the membership on that airline . . . empowered to make the final decision on any . . . problems of the members of that airline, except as provided elsewhere in the Constitution and By-Laws. . . . However, nothing in this Section shall authorize any Master Executive Council to initiate any action that is inconsistent with this Constitution and By-Laws or with the best interests of [ALPA] or the general membership."

7. ALPA's Constitution & By-Laws at Article IV and its Membership Policy Manual relevantly provide that

> "the Master Chairman shall be . . . [t]he Chief Executive officer of his Master Executive Council . . . responsible for administering the policies of his Master Executive Council . . . co-ordinating . . . Local Council policy"

and

> "the Master Executive Council Chairman is the airline spokesman . . . [a]ll Master Executive

> Council committees and all [Local Executive Councils] operate under the jurisdiction of the [Master Executive Council] whose spokesman is the Master Executive Council Chairman."

8. ALPA's Constitution & By-Laws at Article IV relevantly provides that

> "approval by a majority vote of the Master Executive Council . . . with the advice of the President, is mandatory before a strike vote of the members of an airline may be taken. This membership strike vote shall be by secret ballot . . . validated under the supervision of the election and Ballot Certification Board who shall certify the results . . . and notify the Secretary [who] shall promptly mail . . . the certification to . . . that airline's Master Executive Council. A simple majority of the valid ballots returned shall govern."

9. On information and belief, Defendant ALPA has a Merger & Fragmentation Policy, in effect since 1971,

> "purpose[d] is to provide protection for the employment rights of flight deck operating crew members in an orderly, expeditious, and equitable manner . . . when . . . a temporary or permanent alteration of . . . route structure or operations [is effected] by a merger, consolidation, unification, purchase, acquisition of control, pooling or any other similar arrangement . . . of . . . separate airline facilities or any of the operations or services previously performed . . . through . . . separate facilities or any alteration . . . of another carrier's service, or the formation of an Alter Ego company which may result in the transfer, displacement or dismissal

> of flight deck operating crew member or a dilution or diminution of benefits attaching to his previous employment."

10. The Merger & Fragmentation Policy as adopted provided that

> "[i]mmediately following activation of this policy, ALPA shall take all appropriate actions necessary to protect the affected pilots including a request for adequate labor protective provisions from the . . . company or companies involved, the timely enforcement of all contractual provisions in existence . . . to produce the desired crew member protection and, to maintain the status quo . . . until appropriate agreement can be reached with the carrier managements. ALPA must take all steps to establish . . . [t]he right of an appropriate number of pilots from the donor carrier to become employees of the carrier acquiring the operations or route".

11. At all relevant times the Merger & Fragmentation Policy provided that

> "[a]ny attempt by a member or members of ALPA to obtain an agreement which would operate to frustrate the objectives of this policy shall be considered an act contrary to the best interests of ALPA and its members"

and

> "ALPA is directed and all of the members hereby bind themselves to use maximum pressure, including work stoppage, to achieve necessary protection for all flight deck operating crew members involved [in a merger or fragmentation]."

12. On February 23, 1986 Defendant ALPA and EAL entered into a collective bargaining agreement covering those employees of EAL who are and were members of flight crews ("the ALPA/EAL Agreement").

13. The ALPA/EAL Agreement included labor protective provisions ("LPP") which require integration of seniority lists in a fair and equitable manner when two carriers unify, consolidate, merge or pool in whole or in part their separate airline facilities or any of the operations or services previously performed by them through separate facilities.

14. On information and belief, District 100 of the International Association of Machinists ("IAM") representing EAL maintenance workers began a nationwide strike against EAL on March 4, 1989 which continued until January 18, 1991 when EAL ceased operating.

15. On February 17, 1989, Defendant ALPA sent each Plaintiff a letter with a ballot poll card relating to a possible strike by IAM on March 4, 1989 asking each Plaintiff to indicate whether he or she would or would not honor an IAM picket line at EAL or let the EAL MEC make a decision and advising that the ballot poll cards were not to be signed and would be counted by a committee of pilots from at least two other airlines.

16. Less than Ten (10%) Percent of all Defendant ALPA's members employed by EAL and less than Fifteen (15%) who responded to the ballot poll indicated on intention to honor the IAM picket lines.

17. On information and belief, on March 4, 1989 Defendant ALPA's EAL MEC adopted a resolution to honor the IAM picket lines.

18. On March 9, 1989 EAL filed a voluntary petition under Chapter 11 of the bankruptcy code in the United States Bankruptcy Court for the Southern District of New York.

19. On August 6 and 7, 1989 Officers of Defendant ALPA and Chairman of its EAL MEC told members of Defendant ALPA employed by EAL who were honoring the IAM picket lines to return to work.

20.A. Plaintiffs identified on Schedule A in Group I did not cross the IAM picket lines until after August 6 and 7, 1989 when Defendant ALPA's officers and Chairman of its EAL MEC told members of Defendant ALPA employed by EAL who were honoring the IAM picket lines to return to work.

20.B. Plaintiffs identified on Schedule A in Group II crossed the IAM picket lines at various times between March 4, 1989 and August 6, 1989.

20.C. Plaintiffs identified on Schedule A in Group III never honored the IAM picket lines.

21. On information and belief, from in or about August 1989 to the present, Defendant ALPA by its officers, agents, employees and members, with the knowledge and consent and aided and abetted by Defendants Duffy, Babbitt, Copeland, Breen, Baldwin and Peteschenko, compiled and printed a list of persons who allegedly continued, resumed or made themselves available for employment by EAL at various times between

March 4, 1989 and November 23, 1989, a copy of which is annexed as Exhibit 1 ("the Blacklist").

22. The Blacklist includes the name, ALPA and EAL identification number of each Plaintiff.

23. On information and belief, from in or about December 1989 to the present, Defendant ALPA by its officers, agents, employees and members, with the knowledge and consent and aided and abetted by Defendants Duffy, Babbitt, Copeland, Breen, Baldwin and Peteschenko, caused the Blacklist to be published and distributed to the management and employees of domestic and foreign commercial passenger and cargo air carriers, ALPA members, and other entities and persons involved in the aviation industry to prevent Plaintiffs from being employed in any position associated with the aviation industry.

## FIRST COUNT

24. Plaintiffs identified on Schedule A in Group I repeat and reallege the contents of ¶ 1. through ¶ 23. as though fully set forth herein.

25. Knowing that Plaintiffs in Group I did not cross the IAM picket line until told to do so by officers of Defendant ALPA and Chairman of its EAL MEC or acting in reckless disregard of the same, Defendants ALPA, Babbitt, Copeland Breen, Baldwin, and Peteschenko compiled, printed, published and distributed the Blacklist designating Plaintiffs listed on Schedule A in Group I as "Scabs" with actual malice, knowing that describing

Plaintiffs as "Scabs" was false or in reckless disregard of whether it was true or false.

26. Plaintiffs identified on Schedule A in Group I have been damaged in a sum not presently susceptible of calculation but reasonably believed to be in excess of Fifty Million ($50,000,000) Dollars.

## SECOND COUNT

27. Plaintiffs identified on Schedule A in Groups II & III repeat and reallege the contents of ¶ 1. through ¶ 23. as though fully set forth herein.

28. Knowing no vote pursuant to Defendant ALPA's Constitution & By-Laws authorized a strike by Defendant ALPA's active members employed as flight deck operating crew members by Eastern Air Lines, Inc., Defendants ALPA, Babbitt, Copeland Breen, Baldwin, and Peteschenko compiled, printed, published and distributed the Blacklist describing the Plaintiffs listed on Schedule A in Groups II & III as "Scabs" with actual malice, knowing describing such Plaintiffs as "Scabs" was false or in reckless disregard of whether it was true or false.

29. Plaintiffs identified on Schedule A in Groups II & III have been damaged in a sum not presently susceptible of calculation but reasonably believed to be in excess of Fifty Million ($50,000,000) Dollars.

## THIRD COUNT

30. Plaintiffs repeat and reallege the contents of ¶ 1. through § 23. as though fully set forth herein.

31. Between in or about 1987 and 1991 EAL sold, assigned and transferred substantially all of its assets, including aircraft, routes, gates, slots and operating rights to other domestic air carriers including, without limitation, Continental, United, Northwest, Delta, US Air and Pan American.

32. On March 8, 1989 the tribunal which the ALPA/EAL Agreement designated to hear disputes concluded that in the event of a merger by Eastern Air Lines, Inc. ALPA/EAL's flight deck crew member seniority list was to be integrated with the flight deck crew member seniority list of the merging air carrier.

33. On March 9, 1989 Defendant ALPA assured each Plaintiff that Defendant Duffy

> "will put before the Executive Board a program to ensure that [EAL's] sale of any aircraft or routes include the transfer of [EAL pilots]. In addition to our Merger Policy which is clear on this item, we will secure from our ALPA Master Chairman commitments not to allow their members to fly [EAL] planes or routes sold to their companies without the transfer of striking . . . Pilots with those aircraft and routes",

and further assured Plaintiffs that

> "in the event [EAL] is downsized or . . . does not come out of bankruptcy, I will put . . . an additional program before the Executive Board to develop a procedure to absorb [EAL pilots] into our other ALPA Pilot Groups",

concluding with the admonition and assurance that

> "the [EAL pilots] must continue to stand together. . . . We are doing everything within our

> power to protect your careers and your families. Your MEC and I will keep you updated as events change."

34. At a March 13, 1989 special meeting, Defendant ALPA's Executive Board unanimously adopted a resolution that disposition of EAL assets qualifies for implementation and application of the Merger & Fragmentation Policy meaning that ALPA/EAL Pilots must accompany the transfer of EAL assets in a fair and equitable manner which resolution stated in pertinent part

> "WHEREAS the sale or other disposition of assets . . . have a direct impact upon pilots employed by the carrier effecting such sale and adversely affecting the seniority and employment rights of those pilots, and . . . such sale of assets has already occurred on Eastern Airlines with a serious impact on [ALPA/EAL Pilots] . . . and . . . ALPA Merger Policy currently provides the appropriate provisions to protect the employment and seniority rights of pilots of both the donor and acquiring carriers in cases of carrier fragmentation,
>
> THEREFORE BE IT RESOLVED that the Executive Board hereby reaffirms the implementation of ALPA Merger Policy . . . and its application to the current situation at Eastern Airlines."

35. On March 14, 1989 Defendant ALPA informed each Plaintiff of the March 13, 1989 resolution, assuring each Plaintiff that

> "Executive Board . . . approved strike benefits, interest-free loans and other support for [ALPA/EAL Pilots] . . . agreed to seek agreements with their carriers . . . that [ALPA/EAL Pilots] would become employees of any carrier

> acquiring any part of Eastern's operation, with preservation of seniority . . . that their members will not fly former Eastern [Air Lines, Inc.] routes or aircraft, absent such protections for [ALPA/EAL Pilots]".

36. On March 14, 1989 Defendant ALPA informed each Plaintiff of "a major victory in . . . protection of seniority in case of an official merger [by EAL] with Continental or any other carrier" and assured them that the Labor Protective Provisions upheld in a grievance

> "would prevent [EAL pilots] from being put at the bottom of the list of Continental or any other merging carrier"

and

> "that [EAL pilots] could claim that certain actions (such as transfer of assets or routes, sharing of SODA, etc.) taken at [EAL], Texas Air or Continental since February 23, 1986, or in the future, constitute a merger which requires a fair and equitable seniority integration."

37. In a letter to each Plaintiff dated July 14, 1989 Defendant ALPA acknowledged it had failed to enforce the Merger & Fragmentation Policy in the past but assured each Plaintiff that

> [a]t the March 13, 1989, Special Executive Board meeting . . . Board members unanimously embraced a resolution affirming that the disposition of Eastern [Air Lines, Inc.] assets qualifies for the implementation of ALPA merger policy. In other words, [ALPA/EAL Pilots] go with Eastern [Air Lines, Inc.] assets in a fair and equitable manner to be determined under merger policy. Members of the Executive Board

> at the July 12 special meeting reaffirmed that decision in its first practical application."

38. In October 1990 Defendant ALPA's Board of Directors adopted a resolution which was disseminated to each Plaintiff and which stated that

> "upon liquidation of [EAL's] remaining assets (including, but not limited to aircraft) whether in whole or in part, all ALPA pilot groups whose carriers acquire those assets will work with managements as per ALPA Merger/Fragmentation Policy to Provide maximum protection for the [EAL] ALPA pilots."

39. On December 12, 1989 Defendant ALPA's Executive Board decided that the "Carrier Fragmentation policy is ambiguous and has not been . . . required to be applied before this year" and adopted a resolution eviscerating the Merger & Fragmentation Policy which stated in pertinent part that

> "questions which may arise as to whether carrier fragmentation has occurred . . . and whether such policy covers a particular transaction or type of transaction shall be determined by the President and Executive Committee".

40. At a meeting of Defendant ALPA's Executive Board on May 22-24, 1990, the Merger & Fragmentation Policy was emasculated, making it discretionary rather than mandatory to apply the Merger & Fragmentation Policy "when one airline disposes of assets, which . . . reduces the pilot staffing requirements of the donor airline."

41. On information and belief, during the period from in or about 1990 through in or about 1992, Defendant ALPA's EAL MEC requested that Defendant ALPA's Executive Board apply Defendant ALPA's Merger & Fragmentation Policy to Eastern Air Lines, Inc.'s sale, assignment and transfer of substantially all of its assets, including aircraft, routes, gates, slots and operating rights to other domestic air carriers including, without limitation, Continental, United, Northwest, Delta, US Air and Pan American.

42. On information and belief, the Chairman of the MEC of each air carrier acquiring such assets opposed the request of Defendant ALPA's EAL MEC.

43. On information and belief, the Chairman of the MEC each air carrier acquiring such assets informed Defendant Babbit that Defendant ALPA's collective bargaining agreements with such air carriers did not offer transfer opportunities for flight deck operating crew members previously employed by Eastern Air Lines, Inc. and rejected utilization of section 6 negotiations and Defendant ALPA's refusal to implement and apply its Merger & Fragmentation Policy to Eastern Air Lines, Inc.'s sale, assignment and transfer of substantially all of its assets, including aircraft, routes, gates, slots and operating rights to other domestic air carriers was not in good faith but was to insure that flight deck crew members of such air carriers would retain their employment and seniority rights.

44. On information and belief, notwithstanding that Defendant ALPA's MEC at Delta Air Lines, Inc. had earlier stated that Defendant ALPA's collective bargaining

agreement with Delta Air Lines, Inc did not offer transfer opportunities for flight deck operating crew members previously employed by Eastern Air Lines, Inc., subsequent to acquisition of assets from Pan American Airways, Inc. in or about July 1991, with the knowledge and approval of Defendant ALPA's MEC, Delta Air Lines, Inc. agreed to hire several hundred flight deck crew members formerly employed by Pan American Airways, Inc.

45. On information and belief, in an effort to obtain employment for flight deck operating crew members previously employed by Eastern Air Lines, Inc. notwithstanding Defendant ALPA's bad faith refusal to implement and apply its Merger & Fragmentation Policy to Eastern Air Lines, Inc.'s sale, assignment and transfer of substantially all of its assets, including aircraft, routes, gates, slots and operating rights to other domestic air carriers, Defendant ALPA's EAL MEC negotiated an agreement with the Eastern Air Lines, Inc. bankruptcy trustee effective August 1992 pursuant to which, in return for reducing the amount in settling certain litigation, Eastern Air Lines, Inc.'s bankruptcy trustee would help Defendant ALPA's EAL MEC implement and apply Defendant ALPA'S Merger & Fragmentation Policy by obtaining jobs with seniority at air carriers that had acquired Eastern Air Lines, Inc. assets for flight deck operating crew members previously employed by Eastern Air Lines, Inc.

46. On information and belief, Defendant ALPA and its officers and Executive Board failed to make good faith efforts and obstructed efforts by Eastern Air Lines, Inc.'s bankruptcy trustee to help Defendant ALPA's EAL MEC

implement and apply Defendant ALPA'S Merger & Fragmentation Policy by obtaining jobs with seniority at air carriers that had acquired Eastern Air Lines, Inc. assets for flight deck operating crew members previously employed by Eastern Air Lines, Inc.

47. Prior to April 8, 1991 the arbitrator designated by the ALPA/EAL Agreement to determine if Eastern Air Lines, Inc. had merged with Continental Air Lines, Inc. or another carrier invoking the Labor Protective Provisions of the ALPA/EAL agreement communicated with representatives of Defendant ALPA, Eastern Air Lines, Inc., Continental Air Lines, Inc. and each of the four groups representing pilots employed by Continental Air Lines, Inc. inviting them to participate in the Labor Protective (LPP) arbitration and submit their respective positions on the issue of the arbitrator's jurisdiction to determine the question of merger.

48. On information and belief, in or about November 1991 Defendant ALPA's EAL MEC requested that Defendant ALPA's Executive Committee apply Defendant ALPA's Merger & Fragmentation Policy to Eastern Air Lines, Inc.'s sale of assets to other air carriers in 1991.

49. On information and belief, in or about December 1991 Defendant ALPA's Executive Committee put the EAL MEC in receivership and Defendant Babbit appointed Francis Kelker Receiver.

50. On information and belief, in or about January 1992 Defendant ALPA's Executive Committee rejected the request by Defendant ALPA's displaced EAL MEC to apply Defendant ALPA's Merger & Fragmentation Policy

to Eastern Air Lines, Inc.'s sale of assets to other air carriers in 1991.

51. On information and belief, Defendant ALPA's displaced EAL MEC appealed the decision of Defendant ALPA's Executive Committee rejecting the request to apply Defendant ALPA's Merger & Fragmentation Policy to Eastern Air Lines, Inc.'s sale of assets to other air carriers in 1991 to Defendant ALPA's Executive Board.

52. On information and belief, on or about May 7, 1992 Defendant ALPA's executive Board affirmed the decision of Defendant ALPA's Executive Committee rejecting the request to apply Defendant ALPA's Merger & Fragmentation Policy to Eastern Air Lines, Inc.'s sale of assets to other air carriers in 1991.

53. Since prior to May 1992 Defendant ALPA has pursued efforts to be recognized as collective bargaining representative for pilots presently employed by Continental Air Lines, Inc.

54. In August 4, 1992 Findings And Opinion the LPP arbitrator found he had jurisdiction to hold a hearing to determine if Eastern Air Lines, Inc. merged with Continental Airlines, Inc., invoking application of the ALPA/EAL Agreement's LPPs to integrate the pilot seniority lists of the two air carriers.

55. At a February 2, 1993 prehearing conference Defendant ALPA rejected a request to take action to insure that the four Continental Air Lines, Inc. pilot groups be bound by the LPP arbitrator's determination and rejected a proposal to begin the hearing in March 1993.

56. On information and belief, on May 14, 1993 at the Ramada Inn in Newark, New Jersey, Defendant E. Randolph Babbit met with persons employed as pilots by Continental Airlines, Inc. to urge them to vote for Defendant ALPA as the bargaining representative for pilots employed by Continental Airlines, Inc. in a representation election mandated by the National Mediation Board.

57. On information and belief, in response to questions from persons employed as pilots by Continental Airlines, Inc. whether the LPP arbitration would result in integration of Eastern Air Lines, Inc. and Continental Airlines, Inc. pilot seniority lists, Defendant E. Randolph Babbit said in words or substance, "you vote ALPA in and don't worry abut the Eastern pilots".

58. In responding to questions from persons employed as pilots by Continental Airlines, Inc. whether the LPP arbitration would result in integration of Eastern Air Lines, Inc. and Continental Airlines, Inc. pilot seniority lists by saying in words or substance, "you vote ALPA in and don't worry about the Eastern pilots", Defendant E. Randolph Babbit expressed Defendant ALPA's purpose to refrain from integrating the pilot seniority lists of Eastern Air Lines, Inc. and Continental Airlines, Inc. as required by the ALPA/EAL Agreement's LPPs.

59. Defendant ALPA was and is the exclusive bargaining representative for flight deck operating crew members previously employed by Eastern Air Lines, Inc. pursuant to, *inter alia,* the Railway Labor Act, 45 U.S.C. § 151 *et seq.*

60. Defendant ALPA breached its duty of fair representation due to Plaintiffs by failing to make good faith efforts to implement and apply its Merger & Fragmentation Policy and the ALPA/EAL Agreement's LPPS to Eastern Air Lines, Inc.'s sale of assets to other air carriers including, without limitation:

A. Amending its Merger & Fragmentation Policy after Eastern Air Lines, Inc.'s sale of assets to other air carriers in 1991 to avoid having to implement and apply it to Eastern Air Lines, Inc.'s sale of assets to other air carriers both before and after 1991;

B. Failing to assist Defendant ALPA's EAL MEC with Eastern Air Lines, Inc.'s bankruptcy trustee to implement and apply Defendant ALPA'S Merger & Fragmentation Policy by obtaining for flight deck operating crew members previously employed by Eastern Air Lines, Inc. employment with seniority at air carriers that had acquired Eastern Air Lines, Inc. assets;

C. Failing to comply with and enforce its Constitution & By-Laws and Merger & Fragmentation Policy in effect at the time of Eastern Air Lines, Inc.'s sale of its assets to other air carriers which relevantly provided, inter alia, that

> "[a]ny member . . . may be disciplined, fined, or expelled for . . .
>
> (1) Willful violation of this Constitution and By-Laws.
>
> * * *
>
> (10) Doing any act contrary to the best interests of [ALPA] or its members", *ALPA Constitution & By-Laws* @ Article VIII

and

> "[a]ny attempt by a member or members of ALPA to obtain an agreement which would operate to frustrate the objectives of this policy shall be considered an act contrary to the best interests of ALPA and its members" *Merger & Fragmentation Policy*

and

> "ALPA is directed and all of the members hereby bind themselves to use maximum pressure, including work stoppage, to achieve necessary protection for all flight deck operating crew members involved [in a merger or fragmentation]." *Ibid.*

D. Failing to enforce the ALPA/EAL Agreement's LPPs to persuade persons employed as pilots by Continental Airlines, Inc. to vote for Defendant ALPA as the bargaining representative for Continental Airlines, Inc. flight deck operating crew members in a representative election mandated by the National Mediation Board.

61. Defendant ALPA's breach of its duty of fair representation due to Plaintiffs continues and was and is arbitrary, discriminatory and in bad faith, purposed to insure that flight deck operating crew members employed by large and financially and systemically sound air carriers for which Defendant ALPA is the bargaining representative continue to enjoy their employment, seniority, retirement and pension rights and to insure Defendant ALPA's election as collective bargaining representative for flight deck operating crew members employed by large and financially and systemically sound air carriers.

62. Defendant ALPA's breach of its duty of fair representation by failure to comply with and enforce its Constitution & By-Laws, Merger & Fragmentation Policy and collective bargaining agreements, Plaintiffs have been damaged by, *inter alia,* their loss of employment, seniority and retirement rights and benefits in a sum not presently susceptible of calculation but reasonably believed to be in excess of One Hundred Million ($100,000,000) Dollars.

WHEREFORE, Plaintiffs demand judgment:

On the First Count for Plaintiffs identified on Schedule A in Group I and against Defendant Air Line Pilots Association, Babbitt, Copeland Breen, Baldwin, and Peteschenko in a sum not presently susceptible of calculation but reasonably believed to be in excess of Fifty Million ($50,000,000) Dollars;

On the Second Count for Plaintiffs identified on Schedule A in Groups II & III and against Defendant Air Line Pilots Association, Babbitt, Copeland Breen, Baldwin, and Peteschenko in a sum not presently susceptible of calculation but reasonably believed to be in excess of Fifty Million ($50,000,000) Dollars;

On the Third Count for Plaintiffs and against Defendant Air Line Pilots Association in a sum not presently susceptible of calculation but reasonably believed to be in excess of One Hundred Million ($100,000,000) Dollars;

With interest as appropriate, the costs and disbursements of this action and reasonable attorneys fees.

Dated: November 23, 1993

Rosner & Goodman
By: /s/ Jonathan L. Rosner
Jonathan L. Rosner
521 Fifth Avenue
New York, New York 10175
(212) 661-2150

Tralins & Associates
By: /s/ Myles J. Tralins
Myles J. Tralins MT9760
1 Biscayne Tower
Two South Biscayne Blvd.
Miami, Florida 33131
(305) 374-3300

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was hand-delivered to Stuart A. Goldstein, Esquire, 444 Brickell Avenue, Suite 300, Miami, Florida 33131, hand-delivered to Robert T. Kofman, Esquire, Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., Suite 2200 Museum Tower, 150 W. Flagler Street, Miami, Florida 33130 and sent overnight mail to Peter Herman, Esquire, Cohen, Weiss and Simon, 330 West 42nd Street, New York, New York 10036 on this 23 day of November, 1993.

/s/ Myles J. Tralins
Myles J. Tralins, Esquire

## SCHEDULE AI

## GROUP 1

Striking Eastern pilots who returned to work on/or after 6 August 1989 following ALPA Officers advise [sic] to return to work, and/or recalled by Eastern Airlines.

| EMP # | NAME |
|---|---|
| 06200 | BIALKO, PETER J |
| 08779 | BRAMHAM, PIERS R |
| 22707 | DOBSON, GORDON W |
| 34417 | GREGGS, ROGER P |
| 50460 | LANDA, GEORGE |
| 61681 | MOURE JR, ROY E |
| 68960 | PETERSON, MARK E |
| 76759 | ROSALY, CARLOS |
| 77426 | SANDERSON JR, JARIB M |
| 85380 | STEVENS, ROMAN L |
| 86583 | SULLIVAN, JOHN L |
| 96388 | WILLIAMS, JAN C |
| 01484 | ALVAREZ JR, JOSE A |
| 04007 | BARNES, WILLIAMS H |
| O7182 | BROWNING, DAVID L |
| 14125 | CHAILLE, BRUCE F |
| 16150 | COLE, JOHN D |
| 17231 | COOK, KENNETH E |
| 17178 | COOK, CARL D |
| 19260 | CRUSH, JAMES M |
| 24113 | DUNN, LARRY J |
| 25544 | ENGELKE, WARREN L |
| 28564 | FOSTER, ROBERT W |
| 29750 | FULLER, ESTAN L |
| 33716 | GREENE, DAVID L |
| 35112 | GUNN, GEORGE H |
| 40003 | HINSDALE, JAMES P |
| 44676 | JOHNSON, RICHARD A |
| 50467 | LANE, DAVID G |
| 59891 | MENDEZ, EDUARDO F |

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|---|---|
| 65972 | OLSEN, GEORGE K |
| 69813 | PINKERTON, KENT R |
| 72837 | REDD JR. WARREN J |
| 73755 | RICKETTS JR. ROBERT M |
| 85967 | STONE, ALAN C |
| 86096 | STOW, CALVIN E |
| 87241 | TALTON III, WILLIAM G |
| 87659 | TAYLOR, ROBERT A |
| 88187 | TERKILDSEN, CARLEF A |
| 88264 | TEW JR, BRANTLEY D |
| 91711 | VESTY, CHARLES H |
| 91785 | VIETMEYER, PHILIP H |
| 04741 | BAUCH, JAMES H |
| 06187 | BEATTIE, DONALD G |
| 11079 | BURKE, THOMAS W |
| 15993 | COCUZZO, DAVID J |
| 17974 | COTTER, STEPHEN B |
| 20650 | DAVIDSON, WILLIAM F |
| 21754 | DEMING, MAURY A |
| 23726 | DUCKWORTH, THOMAS O |
| 24124 | DUNN, RICK A |
| 25315 | ELLIS JR, JAMES R |
| 25705 | ERDMAN, THOMAS G |
| 26811 | FELIU, JOHN E |
| 30657 | GARY, CARROL J |
| 31085 | GAZDA, RICHARD S |
| 33476 | GREKSA, GARY J |
| 40129 | HIPPS, WILLIAM D |
| 42341 | HUGHES, JOHN W |
| 43530 | JACKSON JR, FRED H |
| 44497 | JOHNSON JR, DARWIN E |
| 49119 | KOBLAS, JAMES J |
| 50043 | KURZ, EDWARD S |
| 54513 | MACHISE, JAMES D |
| 55122 | MANN JR, WILLIAM B |
| 57546 | McCONNELL, SPENCER L |
| 58777 | McKENNAN, DAVID J |

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|---|---|
| 60198 | MILANETTE, R T |
| 78089 | SCHEDEL, JOHN R |
| 81672 | SKINNER, JOHN J |
| 85919 | STODDARD, GEORGE P |
| 86103 | StPHILIP, CARL S |
| 89494 | TILLEY, MARSHALL D |
| 92645 | WALTHER, FRANK O |
| 01672 | ANDREWS JR, GEORGE M |
| 01285 | BALDONI, LUIS A |
| 04312 | BAQUE III, FRANK |
| 07844 | BOONE, DUDLEY W |
| 15240 | CLARK, FRANCIS X |
| 18471 | CRAWFORD JR, JAMES H |
| 25753 | ERICKSON, ALAN W |
| 26398 | FALLAVOLLITA, SERAFINO |
| 33368 | GRAU, FERDINAND L |
| 39373 | HIATT JR, HARVEY W |
| 43693 | JACOBOWITZ, LEONARD |
| 50305 | LAINE, JAMES R |
| 50499 | LANDRY JR, DONALD J |
| 64531 | NICKERSON, CHARLES A |
| 66524 | OSTERLUND, JOHN R |
| 68812 | PERRY JR, ALBERT G |
| 78565 | SCHRINER JR, DAVID O |
| 80974 | SIDKY, HUSSEIN H |
| 85467 | STEWARD, DONALD E |
| 86219 | STRADLEY, KENNETH W |
| 86203 | STREET JR, ROBERT B |
| 87031 | SYKES, RUSSELL E |
| 90724 | TURMAN, J. BERRY |
| 91733 | VILLANUEVA, RAFAEL |
| 92067 | VOEPEL JR, WILLIAM C |
| 92135 | VOUDY, JOHN E |
| 94283 | WEIR, JAMES R |
| 94402 | WELLER JR, ALLSTON E |
| 94780 | WESTPHALL, ROBERT C |
| 98291 | WRIGHT, DEAN S |

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|---|---|
| 03051 | AYLSWORTH, WILLIAM E |
| 05026 | BEARD, RONALD E |
| 05282 | BEELS, ROBERT L |
| 05296 | BEER, LESLIE B |
| 09373 | BRITZIUS, EDWARD K |
| 16763 | COMPTON, JOHN P |
| 18541 | CRAWFORD, PETER A |
| 28618 | FOSTER, KERRY A |
| 30515 | GARRARD, SAMUEL L |
| 31398 | GERAGHTY, JAMES D |
| 33057 | GORMAN, BARRY W |
| 34538 | GREZEGORZAK, STANISLAW K |
| 42288 | HUGHES JR, JAMES R |
| 46751 | KELLER, CLARK R |
| 48747 | KLOPP, ANTHONY F |
| 48760 | KLUTHE, DAVID B |
| 55415 | MARINO, EDWARD H |
| 59079 | McLEAN, DONALD W |
| 63686 | NALL JR, ROBERT L |
| 64085 | NESS, RONALD A |
| 64660 | NIELSEN JR, PAUL K |
| 64897 | NOLAND, EDWARD F |
| 67287 | PARR, WILLIAM J |
| 69522 | PHILLIPS, ROBERT A |
| 70659 | POTTER, MARTIN H |
| 79767 | SEWELL JR, HUBERT J |
| 80684 | SHLAPAK, GREGORY M |
| 85593 | STEWARD, WAYNE M |
| 87077 | SYMAN, JOHN E |
| 89994 | TOWNLEY JR, JAMES R |
| 91440 | VAUGHAN, STEPHEN D |
| 91847 | VILLERS, DAVID L |
| 92500 | WALKER, TONY W |
| 94610 | WENGERT, ROGER D |
| 95396 | WHITE, F/O ROBERT L |
| 09325 | BRIDGES, JAMES D |
| 13966 | CHAMPAGNE, CARL M |

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|---|---|
| 18199 | COWEN, JOHN R |
| 19502 | CURRAN, THOMAS R |
| 22266 | DICKMAN, GEORGE A |
| 24547 | EASTMAN, JERRY D |
| 26627 | FAULKNER JR, HENRY C |
| 35582 | HAIGHT, RICHARD A |
| 39297 | HESSLER JR, ROBERT R |
| 40369 | HODGERS, BEN |
| 46176 | KANE, STEVEN G |
| 52356 | LEWICKI, JOHN A |
| 54262 | LYNN, HENRY C |
| 58635 | McHENRY, JAMES R |
| 60481 | MILLER III, WILLIAM B |
| 60557 | MILLER, F/O JAMES A |
| 61230 | MITCHELL, DON S |
| 61250 | MITTELSTAEDT, GEORGE J |
| 62215 | MORREY, FRANK J |
| 64451 | NICCHIA, LEONARD R |
| 67906 | PEACOCK, DONALD J |
| 71562 | PUTONEN, LEONARD R |
| 72540 | RAYBURN, HENRY C |
| 73182 | REIK JR, KARL M |
| 75301 | ROGERS, DOUGLAS J |
| 75459 | ROHRBORN, ROBERT C |
| 75957 | ROSS, BRUCE J |
| 79255 | SECOR, EUGENE F |
| 79480 | SELF, GARY W |
| 82662 | SMITH, JACK G |
| 84160 | SPILLMAN, KEITH T |
| 86108 | STRAESSLE, GREGORY C |
| 44551 | JOHNSON, CHARLES T |
| 02823 | ATTEBERRY, WILLIAM M |
| 16072 | COE, GEOFFREY B |
| 34764 | GROFF, WILLIAM V |
| 35757 | HALL, LARRY M |
| 35669 | HALL, HOWARD W |
| 36712 | HARN, GEORGE F |

| | |
|---|---|
| 52259 | LEWANDOWSKI, RAYMOND A |
| 54404 | LYTER JR, HENRY B |
| 57581 | McCORMICK, JAMES M |
| 60500 | MILLER, DANIEL P |
| 61419 | MOFFITT, ROBERT E |
| 63125 | MUNSTERMAN, RICHARD A |
| 80840 | SHRIVER, LARRY L |
| 84159 | SPILLMAN, HARRY L |
| 87568 | TAYLOR, DEAN H |
| 95743 | WILLIS, HERBERT P |
| 25055 | ELDRIDGE, THOMAS W |
| 32385 | GLENNON, MARTIN F |
| 55609 | MARSHALL, ROBERT W |
| 78177 | SCHANZLIN, DONALD N |
| 62674 | MOSLENER, CARL F |
| 10959 | BURNDRANT, WILLIAM D |
| 65682 | OGDEN, THOMAS H |
| 77731 | SAVAGE, DAVID H |
| 21463 | DECKER III, CHRISTIAN F |
| 24938 | EUGT, RONALD S |
| 29466 | FRITCH, DONALD A |
| 36084 | HANLEY, DARYL R |
| 89376 | TIBBETTS, JOHN W |
| 95188 | WHITAKER, ROBERT B |
| 43278 | INGRAM II, CULPEPPER F |
| 59408 | McRAE, JAMES D |
| 66969 | PARADISE, LEONARD F |
| 41580 | DOGLIONE, FRANK H |
| 27771 | FLETCHER, RONALD A |
| 89875 | TOOLE IV, OLIVER A |
| 90148 | TRAUGER, DONALD W |
| 26383 | FAGAN, THOMAS E |
| 29631 | FRY, ROLAND J |
| 48129 | KINGWELL, RICHARD A |
| 73562 | RHODES, EVERETT S |
| 55360 | MARCIANO, ANTHONY P |
| 57266 | McCARTNEY, KENNETH L |

| | |
|---|---|
| 69477 | PHILLIPS, HENRY C |
| 68787 | McKEON JR, ARTHUR T |
| 19547 | CURTIS, EDWARD M |
| 71009 | PRICE III, WILLIAM T |
| 70019 | PLESSNER JR, JOSEPH B |
| 44692 | JOHNSON, GARY M |
| 86323 | STRONG, DONALD B |
| 22204 | DIBICCARI, DONALD |
| 83977 | SPENCE, WILLIAM M |
| 08894 | BERGSTROM, STEVE Y |
| 51743 | LEE, ALLAN R |
| 24258 | DURANTE, JOHN R |
| 72504 | RAWLS III, FLETCHER H |
| 26891 | FENNELL, GLENN W |
| 77449 | SANDERS, JOHN W |
| 83802 | SOUDERS, JOHN E |
| 16315 | COLE, WILLIAM F |
| 45805 | JORDAN, WILLIAM O |
| 50048 | KUNTZ, ALBERT W |
| 18499 | CRANE, WENDELL E |
| 01282 | ALEXANDER, PETER M |
| 50660 | LANGER, LAWRENCE E |
| 86578 | SULLIVAN, ROBERT F |
| 87637 | TAYLOR, JAMES M |
| 12782 | CARLSON, BRUCE E |
| 35147 | GURL, JOHN T |
| 66058 | O'NEILL, RAMON E |
| 93630 | WATT, ALLEN K |
| 04639 | BASS, WAYLON T |
| 06061 | BERWICK, TIMOTHY N |
| 80334 | SHEPARD, GARY C |
| 52640 | LINK, CHARLES R |
| 97161 | WINGATE, WESLEY A |
| 35911 | HAMILTON, WALCOTT B |
| 89214 | THORNTON, KENNETH A |
| 45819 | GEORGE, HENRY R |
| 47096 | KENT, JESSE H |

| | |
|---|---|
| 82528 | SMITH, WAYNE L |
| 88825 | THOMSON III, JOHN B |
| 91052 | URSO, MICHAEL T |
| 80778 | SHOUN, JOHN W |
| 60495 | MILLER, ROBERT L |
| 20434 | DAVIS, GERALD O |
| 12147 | CALDWELL, QUINTON M |
| 37751 | HASTINGS, GREGORY A |
| 91758 | VICE, GARY W |
| 61138 | MISKOTTEN JR, EDWARD |
| 21495 | DEEG JR, RAYMOND J |
| 23101 | DORAN, BENNY R |
| 28370 | FORMAN, ERROL D |
| 22983 | DONOVAN, MICHAEL F |
| 26554 | FAHN, CHARLES L |
| 29651 | FRYLING, ALBERT A |
| 49868 | KROTZ, GARY E |
| 94782 | WEST, JAMES B |
| 57173 | McCAFFERTY, ELWOOD S |
| 43430 | IVEY, DAVID J |
| 10608 | BRYANT, WARD C |
| 45958 | WOOD, STEVEN C |
| 59939 | MERLY, HECTOR M |
| 29091 | FRAZIER, BENNIE W |
| 51138 | LATHAM, RICHARD C |
| 16776 | COMMANDER JR, JOHN B |
| 27735 | FLETSCHMAN, JOHN C |
| 51501 | LAZAR, DENNIS A |
| 53541 | LOVE, FRANK W |
| 77475 | SANTIAGO, STANLEY |
| 01375 | ARMSTRONG III, FRANCIS C |
| 52469 | LIEBING, KURT M |
| 59153 | MCMAHON, MICHAEL S. |
| 88352 | THEAKSTON, PETER A. |
| 76499 | RUPERT II, JOHN F. |

## SCHEDULE AII

## GROUP II

Striking Eastern pilots who returned to work prior to 6 August 1989, and/or pilots hired after 4 March 1989.

| EMP# | NAME |
|---|---|
| 56449 | MATT, JR, HAROLD A |
| 60565 | MILLER, CHARLES A |
| 76537 | RUSSELL JR, EDWIN F |
| 84133 | SPIEKER JR, SAMUEL G |
| 68406 | PENNJE, JEROME R |
| 82118 | SMITH, ANDREW C |
| 38339 | HECKENBERGER, RICHARD H |
| 66977 | PARK, LARRY L |
| 70712 | POWELL, ELISHA T |
| 00335 | ADAMS, JAMES B |
| 43980 | JARRETT, MARK D |
| 96104 | WILLCOX, GERALD (PAT) |
| 64561 | NICHOLSON, WILLIAM T |
| 60946 | MINARDI, JAMES V |
| 93607 | WATSON, MICHAEL D |
| 27033 | FERTE, GERALD |
| 14190 | CHAPO, JIM E |
| 28899 | FRANCIS, RICHARD H |
| 28448 | FORREST, DOUGLAS W |
| 68664 | PERKINS III, DAVID G |
| 28043 | FONG, GERALD W |
| 01468 | ALSUP, CLAUDE F |
| 86426 | STUPKA III, OTTO J |
| 54894 | MAJERES, DARWIN A |
| 20522 | DAVIS, JOHN E |
| 01942 | ANDERSON, DWIGHT D |
| 18551 | CRAWFORD, DAVID B |
| 92161 | VRECHEK, JOE D |
| 96735 | WILLINGHAM III, ROBERT B |
| 18061 | COUBAN, ROBERT S |
| 92411 | WALKER, DONALD F |

| | |
|---|---|
| 71183 | PROCTOR JR, REED R |
| 06459 | BISGNANO, CHARLES R |
| 12717 | CAPON, RICHARD E |
| 62471 | MORRISON, EDWARD H |
| 90313 | TROOST, RONALD |
| 05346 | BEHR, CAPT. PETER J |
| 77574 | SARGEANT, JAMES S |
| 29173 | FREDERICK, PAUL E |
| 24794 | EDWARDS, KENNETH A |
| 50502 | LANE, DAVID N |
| 23261 | DOUGHERTY JR, RALPH A |
| 50519 | LANE JR, GORDON B |
| 55103 | MALONE, STEVEN J |
| 56318 | MATTHEWS, PATRICK M |
| 85923 | STONE, CARY A |
| 86799 | SWANSON, DAVID V |
| 98815 | YERSAK, RICHARD J |
| 08810 | BRANAM, EDDIE L |
| 55284 | MARCINEK, JERRY V |
| 19080 | CROW, KENNETH P |
| 50453 | LAMPKE, ROBERT H |
| 85900 | STONE JR, RAYMOND G |
| 24450 | DYLONG, JOSEPH |
| 16017 | COLLIER, WILLIAM R |
| 34243 | GRIFFIN, DONNY E |
| 44011 | JASKEWICZ JR, ALFRED A |
| 06890 | BERGHANE, DEAN A |
| 36864 | HARRIS, JAMES A |
| 39795 | HILL, WARREN B |
| 66454 | OUZTS JR, JAMES F |
| 85682 | STIFEL III, ARTHUR C |
| 24066 | DUNMIRE, NIEL E |
| 91401 | VARA, RONALD W |
| 51213 | LAURIA, LOUIS J |
| 25477 | EMERY JR, JAMES C |
| 73649 | RICHARDS, FRANK L |
| 95958 | WILKIE, JAMES R |

| | |
|---|---|
| 02089 | ANGELETTI, THOMAS J |
| 05456 | BELL, DAVID A |
| 00167 | ACHILLE, JOSEPH M |
| 27155 | FICKLEN III, JOHN D |
| 33977 | GRESHAM, JACK S |
| 35297 | GWYNN, GARY L |
| 39624 | HIGGINS, RAYMOND F |
| 42783 | HURON, ROBERT C |
| 49819 | KRITCHER, JAWRENCE N |
| 50586 | LANGEL, WILLIAM A |
| 65342 | OBERLANDER, DONALD H |
| 72953 | REEH, CHARLES D |
| 78547 | SCHREINER, GARY H |
| 93130 | WARREN, DONALD E |
| 00987 | ALLEN, CHARLES D |
| 28767 | FOWELLS, JAMES E |
| 35728 | HALL, VANCE W |
| 46355 | KAY, THEODORE L |
| 57143 | McCARTHY, JOHN A |
| 59118 | McLERAN, CHARLES S |
| 63284 | MURPHY, TIMOTHY B |
| 14754 | CHIRINO, RAFAEL E |
| 23997 | DUNDAS, CHARLES P |
| 61844 | MOORE, ROBERT E |
| 06968 | BLIX III, VICTOR E |
| 67245 | PARKINSON, RICHARD E |
| 03633 | BALDRIDGE JR, JAMES H |
| 15957 | COBLE, DONALD R |
| 34845 | GROSENHEIDER, LARRY D |
| 36083 | HANSEN, PHILIP W |
| 44717 | JOHNSON, GRANT S |
| 46477 | KEATING JR, WALTER J |
| 63396 | MURRAY, HOWARD M |
| 73144 | REINHOLTZ, RONALD E |
| 75845 | ROSENTHAL, EUGENE P |
| 91008 | UNGER, RICHARD L |
| 14964 | CIRROTTI, DENNIS J |

| | |
|---|---|
| 31896 | GILES JR, JAMES T |
| 41222 | HOOTON, JAMES W |
| 50086 | KURTZ, HUGO E |
| 50407 | LAMBIE, JOHN M |
| 50863 | LAPP JR, CHAUNCEY M |
| 51779 | LEE, JAMES R |
| 66775 | PALMER III, DOUGLAS M |
| 77692 | SAUER, DETLEF P |
| 26420 | FARENGA, JACK H |
| 61129 | MISENCIK, PAUL R |
| 09299 | BRILEY, PAXTON H |
| 20597 | DAVIS, WILLIAM R |
| 63911 | NELSEN, RONALD J |
| 07580 | BONNA, FRANK |
| 26550 | FARRELL, RICHARD L |
| 41886 | HOWLEY, WILLIAM P |
| 59062 | McLAUGHLIN JR, JOHN A |
| 60171 | MIHALOW, ANDERLIN F |
| 60329 | MILLER, FRANK P |
| 63509 | MUSICK JR, CHARLES R |
| 67911 | PEACON, ROBERT C |
| 69043 | PETERSON JR, HERBERT W |
| 77025 | SADR, SEYED A |
| 79365 | SEGARS, NELSON P |
| 28588 | FOSTER JR, DEWEY D |
| 04050 | BARGE, PATRICK S |
| 06793 | BLANKENSHIP JR, OTIS T |
| 17724 | CORBITT, JACK D |
| 26582 | FARNSWORTH, EARNEST L |
| 85196 | STEPHEN, WILLIAM P |
| 99487 | ZIOBRO, THOMAS J |
| 31573 | GIBSON, RANDALL W |
| 08869 | HARTMAN, JAMES T |
| 44603 | JOHNSON, ROBERT E |
| 53442 | LOSEE, JEFFREY D |
| 71307 | ABER, LELAND A |
| 80347 | ADAMS, KEITH J |

| | |
|---|---|
| 99588 | ALEXANDER, HAROLD G |
| 99619 | ALFORD, WAYNE L |
| 43463 | ALLEN, ROBERT J |
| 20781 | AMEND JR, FRANK R |
| 72730 | ANDERSON, RONALD R |
| 67626 | ARGUEZ, RICHARD A |
| 15672 | ARNOTT, BRIAN G |
| 20717 | BABAYAN, MATT |
| 81900 | BACHRACH, MICHAEL S |
| 88110 | BARNES, H BRYANT |
| 21007 | BARRERO, FRANCISCO E |
| 69235 | BEATY, GREGORY L |
| 79560 | BELL, LARRY A |
| 59204 | BELTRAN, JORGE E |
| 80344 | BERGSTEIN, DAVID S |
| 69190 | BIGGS, CLIFFORD G |
| 37248 | BJELKEVIG, RICHY A |
| 99585 | BRADLEY, RODERICK D |
| 86723 | BREDTHAUER, DIRK |
| 45884 | BROWN JR, WALTER R |
| 17557 | BROWN, RONALD B |
| 45050 | BRYANT, CHARLES C |
| 15881 | BUCHANAN, EDWARD J |
| 29617 | BURKHART, RONNIE L |
| 17212 | BURNS, DAVID A |
| 79717 | BUTTS, RONALD G |
| 71537 | CARTER, BRUCE R |
| 44036 | CHARNES, JONATHAN E |
| 99639 | CHRISTOPHER, ANTHONY S |
| 30891 | CLARY, MICHAEL I |
| 67889 | CLARY, BONNIE K |
| 16881 | CONNELL III, EARLE W |
| 69183 | CONTI, REGIS G |
| 52595 | CRAUS, CLIFF M |
| 71101 | DAVISON, DAVID J |
| 34541 | DAVOUST, WILLIAM P |
| 97109 | DEPHILLIPS, FLOYD M |

| | |
|---|---|
| 33652 | DICKINSON, RANDALL L |
| 97112 | DURKIN, GREGORY P |
| 34542 | EALY, ROBERT L |
| 81993 | ELMDANAT, ROBERT |
| 79731 | ENGLISH, GARY M |
| 72490 | FANT JR, GLENN E |
| 17412 | FORESTO, JOSEPH M |
| 83467 | FORSBERG, SCOTT |
| 21006 | FRATER, KEVIN X |
| 46545 | FRIED, STEVEN I |
| 20710 | FROST, WAYNE B |
| 37721 | FUGEDY, JOHN J |
| 41897 | GAEDTKE, MICHAEL L |
| 17442 | GAMEL, LARRY L |
| 64824 | GARCIA-VERGARA, HUMBERTO |
| 83468 | GARDNER, DAVID E |
| 43457 | GARZA, ERNESTO |
| 21010 | GREEN, GRANT S |
| 20713 | GREEN, GERALD A |
| 37466 | GRENIE, ARLES A |
| 34551 | GRIBAS, KENNETH C |
| 43460 | GRUETZNER, ALLEN R |
| 95125 | HABY, CLIFFORD M |
| 70907 | HALLORAN, DIANE M |
| 71175 | HANEY, FRED C |
| 99631 | HANNON JR, JAMES H |
| 64109 | HANSHAW, RONALD G |
| 70906 | HARRISS, ROBERT J |
| 71177 | HARTLEY, JOSEPH D |
| 64117 | HASSETT, PATRICK R |
| 73299 | HAWKINS, THOMAS R |
| 44038 | HOLLEY, JANERAL L |
| 43464 | HOVERKAMP, GEORGE V |
| 07270 | HOWARD, CHARLES B |
| 81891 | HUDDELSTON, JAMES D |
| 37593 | INMAN, BROWNIE N |
| 64120 | IRANIPOUR, FARZIN |

| | |
|---|---|
| 42471 | JOHNSON, RICHARD A |
| 37252 | KALANTARI, FEREADOON |
| 36517 | KENNEDY, MICHAEL J |
| 59207 | KAHN, NAZIR |
| 80433 | KOZIOL, ROBERT L |
| 89784 | LAING, RICHARD L |
| 76656 | LAMAUTE, LYONEL L |
| 99589 | LAMECKER, DENNIS R |
| 43851 | LANTZ, KENNETH M |
| 31861 | LAWRENCE, CHARLES W |
| 23614 | LEA, ROBERT G |
| 64818 | LEONHARDT, STEPHEN J |
| 00674 | LEVY, SIMON |
| 88929 | LORENZO, GUSTAVO A |
| 88930 | LYTLE, RICHARD A |
| 15648 | MAAROUF, DAN H |
| 67747 | MANDULEY, LEONARD F |
| 88933 | MANNING, BOB S |
| 69238 | MARTINEZ-ALEGRIA, JOSE |
| 79903 | MASON, HUGH C |
| 56352 | MATHISEN, NORMAN A |
| 40113 | MAUGERI, PETER J |
| 38873 | MAURO, ANTHONY F |
| 86138 | McCABE, LARRY |
| 65707 | MCCLANNAHAN, RICHARD W |
| 88935 | MCCRACKEN, KEITH K |
| 79112 | MCKENNA, WILLIAM D |
| 36351 | MEANS, JAMES A |
| 42478 | MICHAEL, DONALD K |
| 17525 | MILLER, THOMAS O |
| 46536 | MOKTADIER, JOHN A |
| 00666 | MORGAN, DAVID P |
| 79509 | MORRISON, DAVID L |
| 63598 | MYAL, WALTER J |
| 67887 | NAGY, STEVE J |
| 83342 | NEAL, WILLIAM |
| 65705 | NELSON, DOUGLAS C |

| | |
|---|---|
| 72180 | NEUMANN, PETER G |
| 86143 | NORMAN II, JOSEPH S |
| 72181 | O'CONNELL, JOHN M |
| 79747 | OGILVIE, THURSTON L |
| 79508 | OSMAN, DALE E |
| 93728 | PALERMO, FRANK G |
| 72304 | PAPPAS, THEODORE |
| 45046 | PASCHKE, JAY M |
| 41613 | PAULEY, LEON T |
| 25091 | PERRY, THOMAS H |
| 68433 | PENROD, GARY B |
| 72307 | PETERS, LEROY W |
| 58804 | PETKO, JAMES G |
| 25092 | PETTIT, BRIAN D |
| 38909 | PHILLIPS, TERRY E |
| 32422 | POIRIER, NOEL A |
| 20780 | PRIEST, PETER D |
| 83349 | RAJU, KANPUR V |
| 72308 | RAMAPRAKASH, TILAK S |
| 93740 | ROBERTS, REGINALD |
| 99465 | ROSMAN, KEN S |
| 60031 | ROSS, THOMAS D |
| 83267 | SCHRAG, JAMES A |
| 58808 | SCHULTHEIS, DALE H |
| 43412 | SESSUMS, STEPHEN E |
| 79512 | SHEEHAN, FREDERICK J |
| 20196 | SIMMONS, GARY W |
| 79514 | SITTA, DONALD C |
| 99598 | SOFFERIN, JEFFREY L |
| 79564 | STANTON, DONALD H |
| 95117 | STROUP, ROBERT |
| 69346 | STRUS, MICHAEL W |
| 79627 | SULLIVAN II, ENNIS C |
| 98492 | SWARTZFAGER III, PAUL G |
| 41976 | TATE, JOSEPH F |
| 41977 | THOMPSON, ROGER L |
| 40119 | TRIPP, DALE P |

| | |
|---|---|
| 79111 | TUCKER, DAVID W |
| 99595 | TUCKER, TERRY T |
| 41126 | TURNER, J R |
| 93895 | TYREE, WILLIAM M |
| 29608 | VanBAALEN, PAUL H |
| 69349 | VANEK, ALEXANDER G |
| 79712 | VOHRA, PANKAJ |
| 43926 | WALTON, MICHAEL R |
| 88106 | WATERSTREET, MARK A |
| 70042 | WEST, PETER |
| 46483 | WESTBY, DOROTHY C |
| 51947 | WHITLEY, DONALD F |
| 41130 | WHITNEY, RICHARD A |
| 71309 | YATES, GARY W |
| 84253 | YEATER, DONALD A |
| 99635 | LINN, DENNIS |
| 83392 | BERRY, ALAN L. |
| 14846 | CHRISTOPHER, MAURICE A. |
| 42958 | HUTSON, ROBERT T. |
| 25095 | SHORE, GERALD E. |
| 97653 | WOOD, THOMAS R. |
| 31864 | LINDNER, ANTHONY |

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## SCHEDULE AIII

## GROUP III

Eastern pilots who never honored Eastern Sympathy Strike.

| EMP# | NAME |
|---|---|
| 04299 | BARTLETT, DAVID R |
| 06213 | BICHAN, BRUCE G |
| 08190 | BOWLER, ROLAND K |
| 10415 | BRUNDAGE JR, GRANT H |

| | |
|---|---|
| 10827 | BUETER, THOMAS H |
| 10973 | BUNTIN JR, EDWARD S |
| 15047 | CLARK, DOUG E |
| 15347 | CLAYTON III, WILLIAM B |
| 21973 | DEVEREAUX, JOHN A |
| 23825 | DUKIET JR, WALTER W |
| 26021 | EVANS, RICHARD H |
| 27221 | FILLER, ROBERT E |
| 27461 | FISHER III, JOEL F |
| 32281 | GLASGOW, JAMES S |
| 36917 | HARTMAN, EUGENE D |
| 41749 | HOWARD, JAMES W |
| 42182 | HUDSON, CHARLES V |
| 42953 | HUTCHINS, ROBERT A |
| 46576 | KEELER JR, RALPH L |
| 46805 | KELLY, WILLIAM J |
| 50524 | LANE, FRANKLIN W |
| 51266 | LAVARELLO, EUGENE F |
| 52088 | LEONARD, JOHN G |
| 51730 | LESLIE, GARY A |
| 54627 | MADDEN JR, JOHN J |
| 67272 | PARRAMORE, MARCUS L |
| 69841 | PIPKIN, ROGER P |
| 77033 | SCOTT, SANFORD D |
| 79968 | SHARPE, DAVID F |
| 80105 | SHEA JR, JOSEPH M |
| 82213 | SMITH, DAVID L |
| 84242 | SPORT, WILLIAM A |
| 84579 | STANDISH, RICHARD W |
| 85905 | STONE, EDWARD E |
| 86155 | STRADER, JAMES R |
| 86566 | SULLIVAN JR, JOHN B |
| 87683 | TAYLOR JR. GLYN M |
| 88887 | THOMPSON, STEPHEN C |
| 90261 | TRIGO, JUAN A |
| 91351 | VanHOOSEAR, LEON L |
| 91791 | VINCENT, BENJAMIN B |

| | |
|---|---|
| 92365 | WALBY, THOMAS F |
| 99401 | ZENG, ROBERT E |
| 29077 | FREYTES, LUIS R. |
| 73603 | RICHARDS, KENNETH L. |

[LIST OF NAMES REPRODUCED AT PAGES __ TO __]

# THE SCABS OF EASTERN
# OF
# THE STRIKE OF '89

> "WHAT A MAN IS SPEAKS SO LOUDLY,
> THAT I CANNOT HEAR WHAT HE SAYS"
>
> Emerson

> "IT IS BETTER TO DIE WHILE
> STANDING ON YOUR FEET
> THAN
> TO BE LIVING ON YOUR KNEES---"
>
> Emilio Zapata

## ODE TO A SCAB

*After God had finished the rattlesnake, the toad, and the vampire, He had some awful substance left with which He made a SCAB. A SCAB is a two-legged animal with a corkscrew soul, a water-logged brain, and a combination backbone made of jelly and glue. Where others have hearts, he carries a tumor of rotten principles.*

*When a SCAB comes down the street, men turn their backs and angels weep in heaven, and the devil shuts the gates of hell to keep him out. No man has a right to SCAB as long as there is a* *pool of water deep enough to drown his body in, or a rope long enough to hang his carcass with. Judas Iscariot was a gentleman compared with a SCAB. For betraying his Master, he had character enough to hang himself. A SCAB HASN'T!*

*Esau sold his birthright for a mess of pottage, Judas Iscariot sold his Savior for thirty pieces of silver. Benedict Arnold sold his country for a promise of a commission in the British Army. The modern strike-breaker sells his birthright, his country, his wife, his children, and his fellow-men for an unfulfilled promise from his employer, trust or corporation.*

– Jack London, 1915

# APPENDIX K

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CASE NO. 97-5587

LARRY DUNN, ET AL.,

Plaintiffs/Appellants,

vs.

AIR LINE PILOTS ASSOCIATION, ET AL.,

Defendants/Appellees.

On Appeal from the United States District
Court, Southern District of Florida

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## REPLY BRIEF OF APPELLANTS TO (1) ANSWER BRIEF OF APPELLEES AIRLINE PILOTS ASSOCIATION, ET. AL. AND (2) ANSWER BRIEF OF APPELLEES CHARLES H. COPELAND, ET. AL.

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* * *

> pilots he needed. *This was a crucial juncture in the strike."*

(emphasis added) (Pls' exhib. presented at hearing on Defs' Motion for Sum. Judge (R25-443). Once again, the Copeland defendants have no reply to this powerful evidence. The ALPA defendants simply quibble with the figures. They assert, with no record reference, that "only 23 [Group I] plaintiffs crossed on August 7," and that the defendant Duffy stated in his deposition that merely a "large number" of pilots crossed the picket lines after August 6, 1989. [ALPA Br. 18, n. 9]. That "large number" was "over 450 pilots," according to the defendant Copeland in the above-stated letter. It is certainly a fair inference – indeed an irresistible one – that these pilots all went back to work because they were told by to do so by Bavis.

(e) The ALPA defendants contend, however, that "the audiotape of the August 6 meeting *irrefutably demonstrates* that Bavis *prefaced his remarks* by stating that he was *'[s]peaking just as Jack Bavis, the pilot,' not as 'your elected representative*[ ].' " (emphasis added) [ALPA Br.35]. The Copeland defendants make a similar assertion. [Copld Br. 28-29]. Once again, this is a total distortion. There is no official transcript of this meeting at all; what exists are five (5) incomplete, garbled audiotapes of parts of the meeting unofficially taken by several pilots. (Bavis Decl. 1-2; R13-342). ALPA's excerpted quote is hardly a preface of any kind, as it is lifted from page 22 of one of these garbled audiotapes after Bavis had been talking for 21½ pages. This excerpt reads:

> "Five months, I get this bill – ( ) How am I going to get there – ( ) Doing what I'm doing, I start

> thinking about – ( ) you – ( ) problems with homes there are problems with paychecks, there are problems with children, there are problems with the rent – ( ) who wants a solution and they're looking for that, and they want someone to say something to them – (INTERRUPTION) I'm not speaking – ( ) MEC. *I'm not speaking* – ( ) *any of your elected representatives.* ( ) *Speaking as Jack Bavis – the pilot.* Like I told you – ( ) day one, it was in our best interest – ( ) honor the IAM picket line and go out on strike. I believe now – ( ) question of the diminishing number of jobs over a period of time – ( ) says to us, that if we stay on our present course of action – ( )."

(Bavis Decl., exhib. 6, p. 22; R13-342) (emphasis added). There is utterly nothing in the above underscored, broken-up, quoted comments of Bavis which remotely shows that his entire remarks at this union meeting were simply his own personal opinions. In their statements of facts, the ALPA defendants also state:

> "As *an audiotape* of the meeting irrefutably confirms, Bavis made plain that *'I'm not going back to work personally, unless we all go back to work in the cockpit . . . 'I'm not going to* [sic] *going back to work and cross the picket line."* (record citation omitted). *'[R]egardless of what the outcome is in terms of the decisions we make as a group,'* Bavis explained, *'we've made them as a group coming out, we made them as a group going back.'* "

[ALPA Br. 15]. These comments, however, are taken entirely out of context from *three* unofficial, incomplete audiotapes of this meeting which are strung together as if it were one continuous series of comments from a single transcript.[3] Similarly, the Copeland defendants quote an out-of-context, broken-up portion of Bavis' statements to the same effect from the middle of yet another incomplete, unofficial audio tape. [Copld Br. 28]. Although space limitations[4] do not permit us to fully expose these

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[3] The three incomplete transcripts, from which these quotes are lifted, can be found at R13-342, as exhibits 3, 4 and 6 to John Bavis' Declaration. The first quote comes from page 10 of exhibit 3; the second quote comes from page 18 of exhibit 4; and the third quote comes from page 20 of exhibit 6.

[4] Space limitations also do not permit us to correct the numerous distortions throughout the defendants' briefs in which it is charged that some individual plaintiffs allegedly (1) agreed with and participated in the preparation of the "scab list," (2) admitted that they or other plaintiffs were, in fact, "scabs," and (3) conceded that the defendants thought the plaintiffs were "scabs." [ALPA Br. 5-6, 9, 11, 38 n. 18, 40; Copld Br. 12, 16, 30-31, 40-41]. Suffice it to say that all of these claims are either completely inaccurate, highly inflated, taken entirely out of context, or are unsupported by the record as a whole; they should be sorted out at trial, we think, rather than adjudicated on summary judgment.

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Supreme Court, U.S.
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**Nos. 99-1507 and 99-1530**

IN THE

# Supreme Court of the United States

LARRY DUNN, TOM DUCKWORTH, *et al.*,
*Petitioners,*
v.

AIR LINE PILOTS ASSOCIATION,
HENRY DUFFY, *et al.*,
*Respondents.*

JOSEPH S. NORMAN, II.
*Petitioner,*
v.

AIR LINE PILOTS ASSOCIATION,
HENRY DUFFY, *et al.*,
*Respondents.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals For the Eleventh Circuit**

## BRIEF OF RESPONDENTS IN OPPOSITION

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## QUESTION PRESENTED

Whether the courts below correctly concluded that petitioners—all of whom admittedly crossed their union's picket lines in the massive pilot sympathy strike at Eastern Air Lines, Inc. in 1989—could not sustain a libel action for being called "scabs" because (1) the description was not false and (2) there was no clear and convincing evidence of actual malice on the part of respondents?

## TABLE OF CONTENTS

Page

QUESTION PRESENTED .......... i

TABLE OF AUTHORITIES .......... ii

STATEMENT OF THE CASE .......... 1

REASONS WHY THE WRIT SHOULD NOT BE GRANTED .......... 5

CONCLUSION .......... 12

# TABLE OF AUTHORITIES

CASES Page

*ATX, Inc. v. U.S. Dept. of Transp.*, 41 F.3d 1522 (D.C. Cir 1994) .......... 2

*Air Line Pilots Ass'n v. Eastern Air Lines, Inc.*, 849 F.2d 1481 (D.C. Cir. 1988) .......... 2

*Air Line Pilots Ass'n v. O'Neill*, 499 U.S. 65 (1991) .......... 2, 4

*Eastern Air Lines, Inc. v. Air Lines Pilots Ass'n*, 861 F.2d at 1546 (11th Cir. 1988) .......... 2

*Eastern Air Lines, Inc. v. Air Line Pilots Ass'n*, 710 F.Supp.1342 (S.D. Fla.), *aff'd*, 136 L.R.R.M. (BNA) 2392 (11th Cir.1989) .......... 1

*Gertz v. Robert Welch, Inc.* 418 U.S. 323 (1974) . 6

*Greenbelt Cooperative Publishing Association v. Bressler*, 398 U.S. 6 (1970) .......... 6, 9, 11

*International Ass'n of Machanists v. Eastern Air Lines, Inc.*, 703 F. Supp. 962 (D.D.C.), rev'd, 863 F.2d 891 (D.C. Cir. 1988) .......... 2

*Linn v. United Plant Guard Workers Local 114*, 383 U.S. 53 (1966) .......... 6, 8, 9, 11

*Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496 (1991) .......... 6, 8

*New York Times, Inc. v. Sullivan*, 376 U.S. 254 (1964) .......... 6

*Old Dominion Branch No. 496, Nat'l Ass'n of Letter Carriers v. Austin*, 418 U.S. 264 (1974) .......... 6, 7, 8, 9, 11

*St. Amant v. Thompson*, 390 U.S. 727 (1968) .......... 8

STATUTES

28 U.S.C. §1441 .......... 5

29 U.S.C. §152 .......... 12

29 U.S.C. §158(c) .......... 12

# BRIEF IN OPPOSITION OF RESPONDENTS AIR LINE PILOTS ASSOCIATION, *HENRY DUFFY AND J. RANDOLPH BABBITT*

Respondents Air Line Pilots Association ("ALPA") and its past presidents Henry Duffy and J. Randolph Babbitt (collectively "the ALPA Respondents")[1] submit this brief in opposition to the petitions for writ of certiorari filed by Petitioners Larry Dunn et al. (No. 99-1507) ("Dunn Pet.") and *pro se* Petitioner Joseph S. Norman II (No. 99-1530) ("Norman Pet.").

## STATEMENT OF THE CASE

A. ALPA is a labor union that represents pilots at a number of commercial airlines. APP. 2.[2] At each airline, an ALPA Master Executive Council ("MEC") of elected pilot representatives from that airline makes union policy decisions relating to that company. *Id.*

In early 1989, Eastern Air Lines, Inc. ("Eastern") reached impasse in its labor contract negotiations with the International Association of Machinists ("IAM"). APP. 2. The Eastern MEC was charged by ALPA's longstanding strike policy with the responsibility of determining whether to direct Eastern pilots to honor or to cross any picket lines established by the IAM. In particular, ALPA's Administrative Manual (which codifies ALPA's longstanding interpretation of ALPA's Constitution and Strike Policy) explicitly provides that "[t]he decision to honor or not honor picket lines of other crafts shall be left to the discretion of the President and the MEC of the carrier involved." APP. 20; *see also Eastern* v. *ALPA*, 710 F. Supp. 1342, 1348 n.13 (S.D.

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[1] The remaining individual respondents are filing a separate brief in opposition to the petitions.

[2] "APP." citations in this brief are to the opinions of the courts below annexed to the petition for a writ of certiorari.

Fla.) (explaining ALPA's procedure for calling a sympathy strike), *aff'd*, 136 L.R.R.M. (BNA) 2392 (11th Cir. 1989).

The Eastern MEC met in February, 1989 and adopted a formal resolution declaring the MEC's intention to direct pilots to honor IAM picket lines in the event of an IAM strike. APP.2.[3] The MEC also directed the MEC officers to survey the membership to measure pilot support for a sympathy strike to provide further guidance to the MEC in its strike deliberations. *Id.* On February 16, 1989, MEC Chairman Bavis sent a letter to each Eastern pilot enclosing a copy of the MEC resolution expressing support for the IAM. APP. 2-3. The following day, the Eastern MEC sent a "ballot poll card" to each Eastern pilot. APP.3. Nearly seventy-five percent of the 2,615 pilots who returned the ballot poll cards responded that they would honor IAM picket lines outright or would support the MEC's decision to call a sympathy strike. *Id.*

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[3] At that meeting, the Eastern MEC reviewed three years of Eastern Chairman Frank Lorenzo's destructive behavior towards the airline and its employees, including Eastern's attempt to repudiate the 1986 pilot collective bargaining agreement, *see Eastern Air Lines, Inc.* v. *Air Lines Pilots Ass'n*, 861 F.2d at 1548-49 (11th Cir. 1988); its attempt to transfer Eastern's Air Shuttle to a non-union subsidiary owned and managed by Lorenzo, *see Air Line Pilots Ass'n* v. *Eastern Air Lines*, 849 F.2d 1481, 1481-82 (D.C. Cir. 1988); and its elimination of more than 20 percent of Eastern's operations and transfer of substantial Eastern work, routes and assets to Lorenzo's non-union Continental Airlines, Inc., *see International Ass'n of Machanists* v. *Eastern Air Lines*, 703 F. Supp. 962, 966-99 (D.D.C.), *rev'd*, 863 F.2d 891 (D.C. Cir. 1988). The MEC also reviewed ALPA's experience with Lorenzo under similar circumstances at Continental in 1983 when ALPA failed to honor IAM picket lines, and management quickly broke the IAM strike, forced the Continental pilots on strike, permanently replaced the striking pilots and withdrew recognition from ALPA. *See generally Air Line Pilots Ass'n* v. *O'Neill*, 499 U.S. 65, 68 (1991). Ultimately, and largely based upon the miserable Eastern experience, the U.S. Department of Transportation indefinitely barred Lorenzo from the airline industry. *See ATX, Inc.* v. *U.S. Dept. of Transp.*, 41 F.3d 1522, 1530-32 (D.C. Cir. 1994).

The Eastern MEC met again on March 1, 1989. *Id.* After reviewing the results of the pilot survey that affirmed the MEC's position and a last minute telephone poll of the pilot group that revealed even stronger pilot support for a pilot sympathy strike, the MEC unanimously adopted a resolution "that all Eastern Air Lines pilots shall honor the International Association of Machinists picket lines and shall refuse to cross picket lines and that all pilots shall refrain from performing any work for EAL during the strike." *Id.* On March 4, 1989, the IAM struck Eastern, and ALPA commenced its sympathy strike. *Id.* Over ninety percent of approximately 3400 Eastern pilots initially joined the sympathy strike and respected the pilot picket lines. *Id.*

B. To continue operations, Eastern embarked on an aggressive plan to lure pilots to cross ALPA picket lines by promising pilots who abandoned the strike that they would receive promotions to higher paying pilot positions by permanently displacing strikers from their pre-strike pilot positions. *Id.* In response, on March 28, 1989, the Eastern MEC unanimously adopted a formal resolution to "publish a finalized list of strikebreaking pilots at the conclusion of the ALPA sympathy strike" and to bring internal union charges under ALPA's constitution against ALPA members who crossed the pilot picket lines. *Id.* Individuals were placed on this list of working pilots only upon receipt of two confirmed reports that the pilot crossed ALPA picket lines, and after being provided with an opportunity to refute the allegation that they had crossed the pilot picket lines to fly for Eastern. APP. 3-4. Additionally, the Eastern MEC, the strike operations committee and striking pilots repeatedly advised working pilots that the union would regard them as strikebreakers or "scabs" if they crossed ALPA's picket lines. APP. 4. On July 31, 1989, for example, an MEC strike committee report reminded pilots that "[a] pilot becomes [a] scab at [the] moment he signs to go back to work." *Id.*

C. By the summer of 1989, the Eastern MEC was engaged in an internal debate over whether to continue the pilot sympathy strike. *Id.* On August 1, 1989, the MEC convened and reviewed the situation for five consecutive days. *Id.* After substantial discussion, and two "straw" polls of the MEC members showing that a majority favored continuing the sympathy strike, the MEC unanimously passed a resolution to continue the sympathy strike pending membership meetings at each local pilot base. *Id.* The first local pilot meeting was in Miami, on August 6, 1989, with audio hookup to other cities. *Id.* Though the parties do not agree on all that was said at that meeting, it is undisputed that the August 6 meeting concluded with the Miami-based Eastern pilots voting overwhelmingly, by a show of hands, to continue the sympathy strike. APP. 4-5. Similar meetings held at other cities throughout the Eastern system concluded (with one exception) with membership votes overwhelmingly in favor of continuing the sympathy strike. The Eastern MEC then passed another resolution continuing the sympathy strike, and the decision was promptly transmitted to all Eastern pilots and reiterated until the termination of the sympathy strike on November 22, 1989. APP. 5.

Petitioners, and other pilots who crossed ALPA picket lines at Eastern between March 4 and November 22, 1989, were placed on a "scabs" list that was later published under the title "The Scabs of Eastern of the Strike of 89," with a full quote of Jack London's "Ode To A Scab". APP. 5.

D. After Eastern terminated operations in 1991, petitioners filed suit against ALPA and the individual respondents, alleging, *inter alia*, that the publication of the "scabs" list constituted libel.[4] The district court granted summary judgment to respondents on the libel claims, concluding that petitioners had not shown that the "scabs" list was false or that there was evidence of actual malice, APP.62-91, and the court of appeals affirmed. APP. 32.[3]

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[4] The suit, originally filed in Florida circuit court, was removed to federal court based on duty of fair representation claims which are governed by federal law. *See Air Line Pilot Ass'n v. O'Neill*, 499 U.S. 65 (1991); 28 U.S.C. §1441 (1994). The suit, as amended three times, also

## REASONS WHY THE WRIT SHOULD NOT BE GRANTED

### I. THE DECISION BELOW IS FULLY CONSISTENT WITH THE OPINIONS OF THE COURT AND DOES NOT MERIT SUPREME COURT REVIEW

A petition for a writ of certiorari will be granted "only for compelling reasons," Sup. Ct. R. 10, such as when a decision of a court of appeals is "in conflict with the decision of another United States court of appeals on the same important matter," Sup. Ct. R. 10(a), or when a court of appeals "has decided an important question of federal law that has not been, but should be, settled by this Court." Sup. Ct. R. 10(c).

Here, no compelling reason exists for granting the writ. The decision of the court below did not conflict with any decision of any other court of appeals and petitioners do not so contend. Nor did the court below "decide[ ] an important question of federal law that has not been, but should be, settled by this Court." Indeed, far from deciding an important question of law, the court below merely applied the legal standard for libel in labor disputes cases—a standard already well-established by the Court—to the undisputed facts of the case.

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included a state law claim for tortious interference with business relationships. APP. 1-2, 7-8.

[3] The court of appeals also affirmed the district court's dismissal of the state law tortious interference claim for failure to state a claim for relief. APP. 2. Petitioners did not appeal the district court's decision granting summary judgment to respondents on petitioners' duty of fair representation claim. APP. 87-91.

The Court has established that federal labor law partially preempts state libel law because national labor policy favors free speech and robust debate in labor disputes. *Old Dominion Branch No. 496, Nat'l Ass'n of Letter Carriers* v. *Austin*, 418 U.S. 264, 273 (1974); *Linn* v. *United Plant Guard Workers Local 114*, 383 U.S. 53, 57-58 (1966). Accordingly, a defamatory statement published in the context of a labor dispute is actionable only if a plaintiff proves that a libelous false statement was made with "actual malice". *Linn*, 383 U.S. at 65; *Letter Carriers*, 418 U.S. at 273-281. Actual malice must be established by clear and convincing proof that the speaker made the statement with knowledge that it was false or reckless disregard of the truth. *Letter Carriers*, 418 U.S. at 281, (quoting test of *New York Times* v. *Sullivan*, 376 U.S. 254, 280, 285-86 (1964)); *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 342 (1974). The Court has explained that falsity must be examined from the perspective of a reasonable reader. *Letter Carriers*, 418 U.S. at 285-86 (adopting analysis developed earlier in *Greenbelt Cooperative Publishing Association* v. *Bressler*, 398 U.S. 6 (1970) and later applied in *Masson* v. *New Yorker Magazine, Inc.*, 501 U.S. 496, 515, 517 (1991)).

The court below carefully reviewed and scrupulously applied the Court's settled precedent here. APP. 9-32. The appeals court looked to common definitions of a "scab" in the labor context as "one who refuses to strike or returns to work before a strike has ended." APP. 14 (*quoting* Websters Third New International Dictionary 2022 (1986); *see also id.* ("scab is a worker who accepts employment or replaces a union worker during a strike"); APP. 82 (district court's citation to Webster's New Collegiate Dictionary 1021 (1979)) (scab is "one who works for less than union wages or on non union terms."). The appeals court correctly determined that the scab designation in this case was factually true under these commonly understood definitions because the petitioners admit they crossed picket lines to work during the 1989 sympathy strike. APP. 14-15, 82. *Compare Letter Carriers*, 418 U.S. at 283 (similarly applying a common, dictionary definition of "scab"). Summary judgment against petitioners' libel claims was thus proper for failure to show falsity. APP. 14-15.

The court additionally held that petitioners' libel claims failed as a matter of law for the independent reason that petitioners failed to produce any (much less clear and convincing) evidence of actual malice on the part of respondents. APP. 24-26. It is undisputed that ALPA promptly and vigorously prosecuted internal union charges against ALPA members who crossed the picket lines, APP. 87, and each individual respondent testified without contradiction that he considered the pilots who crossed ALPA's picket lines to be "scabs" because they abandoned the ALPA sympathy strike, took the jobs of striking pilots, and sided with Eastern management during the strike. APP. 25. There was no evidence that respondents subjectively believed the scab designation for petitioners was false or acted with reckless disregard of the truth because of the procedures used to call the strike. *Id.* To the contrary, the respondents testified without contradiction that they believed that the sympathy strike was properly initiated by ALPA's President and the Eastern MEC and based their belief on ALPA's thirty-year-old written policy and longstanding practice of initiating sympathy strikes without a formal membership vote. APP. 26.

Likewise, the court held that there was no clear and convincing evidence that respondents seriously doubted the scab designation for petitioners who crossed ALPA's picket lines after August 6—and repeatedly until November 22—1989. It is undisputed that the August 6 meeting in Miami and all other cities (except one small station) concluded with overwhelming membership votes to continue the sympathy strike and that the MEC then voted and rejected the option of terminating the sympathy strike. APP. 28. It is also undisputed that ALPA, the Eastern MEC, and the strike committee promptly notified every Eastern pilot of this decision, repeatedly reiterated the direction to remain on strike and maintained pilot picket lines throughout the Eastern system until November 22, 1989. *Id.* The actual malice test focuses on what defendants (not plaintiffs) subjectively knew, *Masson*, 501 U.S. at 510; *St. Amant* v. *Thompson*, 390 U.S. at 731, and the court of appeals properly concluded that under these undisputed facts petitioners could not prove that respondents believed that the "scab" label was false or acted with reckless disregard of the truth. APP. 29-30. These dispositive rulings by the court of appeals scrupulously apply settled law to undisputed facts and do not merit review by the Court. Sup. Ct. R.10.

The appeals court's rejection of the petitioners' novel theory that federal preemption of libel claims can be avoided based on a *post hoc* procedural challenge to the union's decision to strike[6] likewise does not present an important question that should be settled by the Court. Sup. Ct. R.10. This determination was not necessary to the outcome of this case since the appeals court held, correctly, that ALPA properly called the sympathy strike in a manner consistent with its constitution and other governing documents and over thirty years of practice. APP. 18-21. Nevertheless, the conclusion by the court below on petitioners' unsupported theory is in complete accord with the Court's ample precedent. The appeals court explained that this argument

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[6] The court of appeals correctly observed that during the entire course of the 1989 sympathy strike no ALPA member sought an injunction to halt the strike as illegally called under ALPA's constitution. APP. 17, 25. Indeed, it was not until petitioners commenced this litigation in late 1991 (over two years after the sympathy strike was over) that any pilot proceeded to court on a claim that the sympathy strike was illegally called.

"misses the whole point of *Letter Carriers, Linn* and *Bressler's* mandates to consider the surrounding circumstances - and reasonable understanding of the supposedly defamatory remarks and not the strictly legalistic or literal interpretation of the words used." APP. 15. The court observed that the reasonable reader of the "scab" list in this case would view it in the context of a massive union work stoppage, with union picket lines, over ninety percent compliance initially, and subsequent votes by an overwhelming majority of the membership to continue the strike called by the union leadership. APP. 15-16. A reasonable reader of the scab list would thus understand it simply as an accusation that those pilots returned to work across union picket lines during the 1989 work stoppage, the appeals court ruled, and not as a certification that the strike complied with internal union procedures. APP. 17. The court's decision rejecting petitioners' novel theory here does not merit Supreme Court review.

Apart from their novel theory, the *Dunn* petitioners seek this Court's review of what amount to no more than the appeals court's findings on narrow fact-based questions—whether ALPA followed proper procedures in calling the sympathy strike, Dunn Pet. 21-24; whether ALPA instructed the pilots to break ranks and go back to work on August 6, 1989, Dunn Pet. 28-29; and whether ALPA's officers subjectively believed petitioners fit the definition of a "scab", Dunn Pet. 24-29. Such assertions of "erroneous factual findings" do not constitute grounds for this Court's review, Sup. Ct. R. 10; these matters have no significance beyond the instant action. In any event, the court's findings were correct.

The court correctly determined that the sympathy strike was properly called by the Eastern MEC and ALPA's President in accordance with the ALPA Administrative Manual's longstanding provision specific to sympathy strikes, as consistently applied by ALPA for over thirty years, and which did not conflict with more general provisions in ALPA's constitution which do not specifically reference sympathy strikes and which have been interpreted for decades to apply to membership votes in only primary strikes. APP. 18-24.[7] The court was likewise correct in determining that no reasonable jury could find that ALPA terminated the strike or instructed the pilots to break ranks and go back to work in August, 1989. APP. 26-30. Instead, according to undisputed facts, the meetings that began on August 6 ended with membership votes overwhelmingly in favor of continuing the strike; the Eastern MEC voted not to return to work; ALPA's President, the Eastern MEC and the strike committee advised the pilots that the strike continued and repeatedly instructed all pilots to remain on strike; and pilot picket lines continued throughout the Eastern system until November 22, 1989. *Id.* The court was also correct in its determination that there was no (much less clear and convincing) evidence of actual malice on the part of respondents. APP. 24-26. That finding by the court below is supported by respondents' unrebutted testimony that ALPA and its officials subjectively believed that the sympathy strike was called in accordance with ALPA's longstanding practice and procedures and that they considered the pilots who crossed ALPA picket lines to be scabs because they abandoned the ALPA sympathy strike, took the jobs of striking pilots and sided with Eastern during the strike. *Id.* Respondents subjective beliefs on these matters were based on their detailed knowledge of ALPA's longstanding practices and the events surrounding ALPA's sympathy strike at Eastern. Hence even if erroneous, they would not have acted in reckless disregard of the truth. *Id.* None of these findings merit Supreme Court review.

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[7] The court recited the settled law that a union's interpretation of its own governing documents is entitled to considerable judicial deference, subject to review only if patently unreasonable or adopted in bad faith, and concluded that judicial deference was particularly appropriate in this case where ALPA's interpretation is consistent with longstanding past practice, where most pilots participated in the leadership-called strike, where the pilots subsequently voted in August 1989 to continue the strike and where the ALPA's constitution granted its Board (which promulgated the Administrative Manual) authority to resolve disputes. APP. 22-23.

The separate petition of Joseph S. Norman, II presents no compelling basis for Supreme Court review. Norman's argument that partial federal labor preemption of state labor law does not apply in this case because the scab list was published after the termination of the sympathy strike (Norman Pet. 5) is contrary to the Court's decision *Letter Carriers*, 418 U.S. at 264, where in the absence of a strike or even a representation campaign, the Court ruled that the doctrine applied. *Id.* at 280. The Court explained that the application of partial preemption "obviously cannot depend on some abstract notion of what constitutes a labor dispute" but, instead, must turn on "whether the defamatory publication is made in a context where the policies of the federal labor laws leading to protection for freedom of speech are sufficiently implicated." *Letter Carriers*, 418 U.S. at 279. Those policies are clearly implicated in this dispute, and Norman presents no basis for the Court to revisit this settled law here.

Norman's argument that the "scab" designation is false as to him because he did not "work" for Eastern during the sympathy strike (Norman Pet. 8-9) likewise does not merit Supreme Court review. It is undisputed that Norman accepted employment as a DC-9 Captain and received compensation and pilot training from Eastern during the strike. APP. 31. The appeals court properly ruled that he was thus "working" for Eastern in the ordinary sense of the term and that it is this colloquial meaning of the word, and not his legal classification under the Railway Labor Act, that is relevant in determining falsity in this libel case. *Id.* This holding is in complete accord with the Court's opinions in *Letter Carriers*, *Linn* and *Bresslers*, as already discussed above. *See supra* at 9.

Norman's claim of his missing affidavit (Norman Pet. 6-8) does not merit Supreme Court review. Norman merely shows that the district judge did not have his affidavit on the day of oral argument, not that it was never received or considered by the district court. Moreover, the information Norman presents is superfluous since Norman admits that he crossed ALPA's picket lines, accepted pilot employment, and received compensation and pilot training at Eastern during the sympathy strike. APP. 31. Norman's argument, unique to him, does not merit Supreme Court review.

Finally, Norman's argument based on Section 8(c) of the of the National Labor Relations Act, 29 U.S.C. §158(c), (Norman Pet. 9-10) is meritless since the Railway Labor Act, not the NLRA, applies in this case. *See* 29 U.S.C. §152.

## CONCLUSION

For the foregoing reasons, the petitions for a writ of certiorari should be denied.

Respectfully submitted,

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**On Petitions For Writs Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit**

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# RESPONDENTS' COPELAND, BREEN, BALDWIN and PETACHENKO'S BRIEF IN OPPOSITION

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## QUESTIONS PRESENTED FOR REVIEW

Respondents do not agree with the Questions Presented in the Dunn Petitioners' Petition as they misstate the facts and issues decided by the Circuit Court. The record does not support the issues as presented by the Dunn Petitioners. Petitioner Norman likewise advances questions presented which are not supported by the record as they were never raised in the court below.

## PARTIES TO THE PROCEEDINGS

The Copeland Respondents agree with the Petitioners' List of Parties and have no other parties to add.

## TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW ........... i

PARTIES TO THE PROCEEDINGS ................ ii

TABLE OF CONTENTS ............................ iii

TABLE OF AUTHORITIES ......................... v

CITATION OF THE OPINIONS BELOW ............ 1

JURISDICTION .................................. 1

STATUTORY PROVISIONS INVOLVED ............. 1

I. STATEMENT OF THE CASE .................. 1

A. Factual Background ........................ 2

B. Procedural Background ..................... 4

II. ARGUMENT ................................. 5

REASONS FOR DENYING THE WRITS ............ 5

A. The Decision Of The Eleventh Circuit Court Of Appeals Was Factually And Legally Correct ... 7

  i. Factual Findings ........................ 7

  ii. Legal Conclusions ...................... 8

    a. Petitioners Were "Scabs" .............. 9

    b. The ALPA Sympathy Strike Was Legal ... 9

    c. No Actual Malice ...................... 10

B. The Decision Does Not Merit This Court's Attention ... 10

TABLE OF CONTENTS – Continued

Page

C. Petitioner Norman Does Not Raise Any Compelling Or Meritorious Issues For Review ......... 12

  i. Arguments Were Not Raised To The Eleventh Circuit ............................... 12

  ii. The District Court Did Consider All Relevant Evidence ........................... 13

  iii. Norman Worked For Eastern And Was Thus A "Scab" ............................... 14

CONCLUSION ........................................ 15

## TABLE OF AUTHORITIES

Page

CASES:

*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) .... 10

*Bose Corp. v. Consumers Union*, 466 U.S. 485 (1984) .... 10

*Braxton v. U.S.*, 500 U.S. 344 (1991) ................ 11

*Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Ind.*, 527 U.S. 308 (1999) .................... 13

*Linn v. United Plant Guard Workers Of America*, 383 U.S. 53 (1966) ........................................ 8

*Masson v. New Yorker Magazine*, 501 U.S. 496 (1991) .... 10

*National Collegiate Athletic Association v. Smith*, 525 U.S. 459 (1999) ................................. 13

*Old Dominion Branch No. 496, National Association of Letter Carriers v. Austin*, 418 U.S. 264 (1974) ..... 8

*Pennsylvania Department of Corrections v. Yeskey*, 524 U.S. 206 (1998) ............................. 13

STATUTES AND RULES:

The Railway Labor Act, 45 U.S.C. Sections 151 et seq. ............................................ 1

29 U.S.C. Section 158(c)..........................1, 13

Rule 56, Federal Rules of Civil Procedure ............ 1

## CITATION OF THE OPINIONS BELOW

Petitioners correctly state that the opinion of the United States District Court for the Southern District of Florida is unreported. Petitioners further correctly cite the opinion of the Eleventh Circuit Court of Appeals as reported at 193 F.3d 1185.

◆

## JURISDICTION

The Copeland Respondents believe the issues raised by Petitioners do not set forth an adequate basis to justify the exercise of this Court's discretionary jurisdiction as outlined in Rule 10 of the Rules of the Supreme Court of the United States.

◆

## STATUTORY PROVISIONS INVOLVED

The Copeland Respondents agree with the Dunn Petitioners' assertion that the Railway Labor Act, 45 U.S.C. Sections 151 et seq. is generally involved in this matter. However, the Copeland Respondents disagree with Petitioner Norman that this matter involves 29 U.S.C. Section 158(c) or Federal Rules of Civil Procedure 56.

## I.

## STATEMENT OF THE CASE

This Brief In Opposition is filed by Respondents Charles H. Copeland, Edward J. Breen, Lewis Baldwin and Gregory Petachenko who will be referred to collectively as "the Copeland Respondents." The Dunn Petitioners' Statement Of The Case misstates several important aspects of the relevant history of this matter.[1] Respondents offer a more accurate account of the background of this matter and the facts as determined by the Eleventh Circuit Court of Appeals.

### A. Factual Background

This case arises out of the International Association of Machinists' (hereinafter IAM) lawful strike at Eastern Airlines from 1989 through 1991 which arose out of an impasse from unsuccessful collective bargaining agreement negotiations. Although Eastern's pilots were also involved in collective bargaining agreement negotiations, in early March 1989, after the IAM strike was underway, the Air Line Pilots Association (hereinafter ALPA) conducted a lawful sympathy strike in support of the IAM's strike. Pursuant to ALPA's Constitution and By-Laws, the Board of Directors established certain ALPA policies which are maintained in ALPA's Administrative Manual. [Maj. Op. 19][2]. These policies, which are binding on all ALPA members, including all Petitioners who were then ALPA members, provide that "the decision to honor or not honor picket lines of other crafts shall be left to the discretion of the President and the MEC[3,4] of the carrier involved." [Maj. Op. 20]. That is, while a membership vote is required prior to conducting primary strikes, no vote of ALPA members is required for the purpose of authorizing a sympathy strike. [Maj. Op. 21-22]. This procedure has been consistently followed by ALPA and its members during several previous sympathy strikes. [Maj. Op. 20-21]. Over ninety percent of Eastern pilots initially joined the sympathy strike and refused to cross IAM picket lines. [Maj. Op. 3].

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[1] Case No. 99-1507 was filed by Larry Dunn, Tom Duckworth, et al. Those Petitioners will be referred to herein collectively as "the Dunn Petitioners."

[2] The opinion of the Eleventh Circuit was included in the Dunn Petitioners' Petition as Appendix A. The majority opinion shall be cited herein as [Maj. Op.] followed by the page number in the Dunn Petitioners' Appendix A.

In August 1989, ALPA conducted several meetings at which the continuation of the strike was discussed. One such meeting, held in Miami, Florida, on August 6, 1989, was broadcast to other cities. Although the issue of continuing the strike was debated at that meeting, it is undisputed that the Miami-based pilots voted overwhelmingly to continue the strike. [Maj. Op. 4-5]. On August 11, 1989, ALPA advised all pilots of the decision to continue the sympathy strike. [Maj. Op. 5].

ALPA's sympathy strike officially ended on November 22, 1989. It is undisputed, however, that at various times during ALPA's sympathy strike, all Petitioners crossed ALPA's picket lines by returning to work as

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[3] Within each airline, ALPA operates though a Master Executive Council which is a board of pilot representatives, elected by the pilots, and which makes union policy decisions for that airline's pilots. [Maj. Op. 2].

[4] Respondent Charles H. Copeland was a member of the ALPA/Eastern Air Lines Master Executive Council and became its Chairman in September 1989.

pilots, or offering to do so, and in doing so took the jobs of striking Eastern pilots. Petitioners assisted Eastern in breaking the IAM and ALPA strikes and allowed Eastern to continue its operations despite the strikes thus thwarting the strikers' efforts. Petitioners' names were included on a list entitled "The Scabs of Eastern of the Strike of '89." The listing of Petitioners' names on that list formed the basis of their libel claims in this action.

## B. Procedural Background

This matter originated on October 9, 1991, when Petitioners filed their first complaint in the Circuit Court in and for Dade County, Florida, alleging, *inter alia*, defamation.[5] Respondents/Defendants were successful in removing the lawsuit to the District Court. After several amendments and motions to dismiss, Petitioners filed their third and final amended complaint. Upon the completion of all discovery, Respondents filed their motions for summary judgment. The District Court, concluding there was no evidence that the description of Petitioners as "scabs" was either false or published with actual malice, granted summary judgment in favor of all Respondents.

Petitioners appealed to the Eleventh Circuit Court of Appeals where, in a 2-1 decision, it affirmed the District Court decision and found that labeling Petitioners as "scabs" was a truthful allegation and that the scab list was not published with actual malice. [Maj. Op. 2]. Further, the Eleventh Circuit concluded ALPA was not required to conduct a vote prior to conducting a sympathy strike and that ALPA did not end the work stoppage on August 6, 1989. [Maj. Op. 20, 29].

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[5] Other claims were either dismissed or are not before this Court.

## II.

## ARGUMENT

### REASONS FOR DENYING THE WRITS

The Petitions For A Writ Of Certiorari should be denied since the issues raised therein are not representative of the matters resolved by the courts below. The issues presented by Petitioners were neither decided as the Petitions represent nor do they establish the far reaching precedent Petitioners urge upon this Court. Petitioners ask whether a union may label some members as trade union "scabs" for either refusing to honor the picket lines of what they contend was an illegal strike or for refusing to work after allegedly being ordered to do so by their local union president. [Dunn Petition 11, 28]. Petitioner Norman[6] contends the publishing of the "scab" list was untimely, that the District Court did not review relevant evidence, that as a trainee he did not "work" for Eastern Airlines and that the publishing of the "scab" list was a "threat of reprisal," in violation of 29 U.S.C. Sec. 158(c). [Norman Petition 5, 6, 8, 9].

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[6] Joseph Norman, II, filed a separate Petition, pro se. He will be referred to herein as "Petitioner Norman." As noted above, all other Petitioners are referred to as "the Dunn Petitioners." The term "Petitioners" incorporates both.

The Dunn Petitioners argue the Eleventh Circuit's decision establishes that a union has unfettered discretion to illegally call a strike and then label members who do not honor that strike "scabs." [Dunn Petition, 12, 17, 18]. As both the District Court and the Eleventh Circuit have determined based on the record, the Dunn Petitioners are incorrect in their assertion that ALPA's 1989 sympathy strike was illegal, thus, this argument has no merit. [Maj. Op. 18]. Further, the Dunn Petitioners contend that they are not "scabs" since they claim they were told to return to work on August 6, 1989, by their union president. Again, both the District Court and the Eleventh Circuit have determined that ALPA did not officially end the strike until November 22, 1989 and not after the August 6, 1989, meeting as the Dunn Petitioners argue. [Maj. Op. 14, 15, 17, 28]. Thus, returning to work prior to November 22, 1989, in ALPA's view, made Petitioners "scabs." Petitioner Norman's allegations are likewise without merit since they fail to address the central issue in this matter, whether Respondents used the term "scab" knowing it was false and with actual malice.

Petitioners do not call upon this Honorable Court to resolve a compelling and far-reaching matter of federal law, but rather to reassess the factual determinations made by the courts below and to reevaluate the record evidence. The Eleventh Circuit was correct in all its factual determinations and correctly applied the relevant precedent established by this Court. Since Petitioners fail to raise any compelling issue which would merit exercising this Court's discretion in granting a writ of *certiorari*, the Petitions should be denied.

## A. The Decision Of The Eleventh Circuit Court Of Appeals Was Factually And Legally Correct

The Eleventh Circuit's decision does not hold what the Dunn Petitioners represent. They argue the Eleventh Circuit's decision holds a union can call an illegal strike and then label members as "scabs" for not honoring the strike. [Dunn Petition 16]. This argument is incorrect in several aspects. First, the Eleventh Circuit determined the strike was not illegal. [Maj. Op. 18]. Second, the Eleventh Circuit determined that Petitioners, by not honoring the legal sympathy strike, were, in fact, scabs. [Maj. Op. 14, 15].

### i. Factual Findings

The Eleventh Circuit reviewed the record *de novo,* as it is required to do, and determined based upon all the evidence, that the Petitioners were, in fact, scabs, and that the sympathy strike was legal. [Maj. Op. 16, 18]. The Eleventh Circuit based its decision on the fact that ALPA's governing documents give discretion in the calling of the sympathy strike to the MEC and ALPA's president. [Maj. Op. 20] The Eleventh Circuit further found that several sympathy strikes have been called by ALPA in the past without the need for a membership vote. [Maj. Op. 21]. Indeed, no ALPA sympathy strike has ever been preceded by a membership vote. [Maj. Op. 20]. The Eleventh Circuit found that the pilots who returned to work after the April 6, 1989, meeting were considered "scabs" by Respondents since the work stoppage continued after that meeting and until November 22, 1989. Thus, there was no evidence that including those Petitioners' names on the scab list constituted actual malice.

The Dunn Petitioners are essentially asking this Court to review the record below and reassess these factual determinations which are dispositive of this matter. As discussed below, the Eleventh Circuit applied correct legal precedent, as established by this Court, in reaching these factual conclusions. Thus, there is no basis for this Court to exercise its discretion in granting the Petitions merely to reevaluate the evidence and reassess the factual conclusions correctly established by the courts below.

### ii. Legal Conclusions

The Eleventh Circuit's legal analysis was correct. The court applied the precedent established by this Court in *Linn v. United Plant Guard Workers Of America,* 383 U.S. 53 (1966) and *Old Dominion Branch No. 496, National Association of Letter Carriers v. Austin,* 418 U.S. 264 (1974), in determining that "federal labor law partially preempts state libel law because national labor policy favors free speech, open communication, and robust debate in labor disputes," and in order to maintain an action for libel plaintiffs must show actual malice. [Maj. Op. 9]. The court further concluded that prior to reaching the "actual malice" analysis, there must be a "false statement of fact." [Maj. Op. 10]. The court applied the "reasonable reader" approach as set forth by this Court in *Letter Carriers* and concluded the term "scab" must be read from the perspective of a reasonable reader. [Maj. Op. 13].

### a. Petitioners Were "Scabs"

In applying the reasonable reader approach and examining the term "scab" by its commonly understood definition of "one who refuses to strike or returns to work before a strike has ended" [Maj Op. 14], the Eleventh Circuit determined that labeling the Petitioners as "scabs" was not a false statement. That is, because calling Petitioners "scabs" was an allegation that these pilots refused to honor a work stoppage, and because Petitioners admit they crossed the 1989 ALPA picket lines during the work stoppage, "ALPA's listing them as 'scabs' was factually true . . . " [Maj Op. 14].

### b. The ALPA Sympathy Strike Was Legal

The Dunn Petitioners argue the strike was illegally called thus calling them "scabs" was false because they did not, in fact, cross picket lines. [Dunn Petition 25]. However, as detailed above, the Eleventh Circuit concluded the truthfulness of calling Petitioners "scabs" does not turn on the "formalistic, legal analysis of the validity of the strike, but on a reasonable reader's perception of this work stoppage as a 'strike.' " [Maj. Op. 16]. Further, the Eleventh Circuit concluded that the sympathy strike was, in fact, legal. ALPA's Administrative Manual provides in its "Strike Policy" that "[T]he decision to honor or not honor picket lines of other crafts shall be left to the discretion of the President and the MEC of the carrier involved." Thus, no membership vote is necessary, contrary to the Dunn Petitioners' argument. The Eleventh Circuit further determined that ALPA has applied this policy consistently for the past thirty years and declared sympathy strikes without the need of a membership vote. [Maj. Op. 20].

### c. No Actual Malice

The Eleventh Circuit concluded not only that calling Petitioners "scabs" was not false and that the strike was legal, but it also concluded that Petitioners were required to show "actual malice" in order to maintain an action for defamation in this labor dispute. The Eleventh Circuit correctly applied precedent as established by this Court in *Masson v. New Yorker Magazine*, 501 U.S. 496 (1991), *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), and *Bose Corp. v. Consumers Union*, 466 U.S. 485 (1984), in finding that Petitioners must demonstrate by clear and convincing evidence that "the defendant realized that his statement was false or that he subjectively entertained serious doubt as to [its] truth." [Maj. Op. 25 citing *Bose*]. The court determined there was no evidence on the record to show Respondents acted with actual malice in publishing the "scab" list as there was no evidence that any Respondent entertained any doubt that all Petitioners were, in fact, "scabs." [Maj. Op. 26].

## B. The Decision Does Not Merit This Court's Attention

The Eleventh Circuit's decision is not far-reaching, as Petitioners suggest. There is no indication that the Eleventh Circuit's decision stands for the proposition that unions may call strikes and then libel members for not honoring them. As detailed above, the Eleventh Circuit concluded ALPA's 1989 sympathy strike was legal. However, assuming *arguendo* that this factual conclusion is incorrect, the Eleventh Circuit's decision only potentially misinterprets ALPA's administrative procedures. Thus, in no way does the Eleventh Circuit suggest that all unions may follow this procedure for calling sympathy strikes. At most, the Eleventh Circuit's decision that a membership vote is not required prior to calling a sympathy strike is merely an interpretation of ALPA's policies. Thus, the decision only reaches a conclusion as to ALPA, and does not detrimentally affect labor law as Petitioners represent. [Dunn Petition, 17].

Further, Petitioners do not present this Court with a compelling reason to exercise its discretion in granting *certiorari* review. This case does not present, nor do Petitioners allege it presents, a conflict among circuits for resolution by this Court. This Court has noted that "A principal purpose for which we use our certiorari jurisdiction, . . . is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law." *Braxton v. U.S.*, 500 U.S. 344 (1991).

The Dunn Petitioners obviously disagree with the District Court's and the Eleventh Circuit's factual findings and merely ask this Court to review the record and overturn those factual determinations. The Petition is not based on any errors by the Eleventh Circuit, rather Petitioners merely re-argue the merits of their case to this Court. As noted above, those arguments and factual allegations were considered and rejected by both courts below. At most, the Eleventh Circuit reached improper factual conclusions. As mandated by Rule 10 of the Rules of the Supreme Court, this Court rarely grants *certiorari* where the "asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." As discussed above, the Eleventh Circuit applied the correct law and, we believe, reached the proper factual conclusions.

The Petition presents no compelling reason, no conflict between the circuits and no departure from the accepted course of proceedings. The Eleventh Circuit's ruling in no way conflicts with any decisions of this Court. Indeed, Petitioners do not so allege. The Eleventh Circuit was correct in its factual findings and application of the law.

### C. Petitioner Norman Does Not Raise Any Compelling Or Meritorious Issues For Review

Petitioner Norman advances several arguments in his Petition. These arguments are likewise meritless as they do not raise any compelling reasons which would warrant this Court's exercise of discretion in granting *certiorari*.

#### i. Arguments Were Not Raised To The Eleventh Circuit

Petitioner Norman advances arguments in his Petition which were not presented to the Eleventh Circuit. First, Petitioner Norman contends that the publication of the "scab" list a year after the end of the sympathy strike is no longer protected speech. This is a new argument which was never raised by Petitioner Norman before the appellate court below. Second, Petitioner Norman for the first time advances an argument that 29 U.S.C. Section 158(c) forbids the publication of a scab list a year after the labor dispute since this would be a "threat of reprisal or force or promise of benefit," in violation of that section. Another argument not raised before the Eleventh Circuit.[7] This Court has consistently held that it will not consider arguments which were "neither raised nor considered below." *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Ind.*, 527 U.S. 308 (1999); see also *National Collegiate Athletic Association v. Smith*, 525 U.S. 459 (1999) ("Supreme Court would not decide in the first instance issues not decided below"); *Pennsylvania Department of Corrections v. Yeskey*, 524 U.S. 206 (1998) ("Where issues are neither raised before nor considered by Court of Appeals, Supreme Court will not ordinarily consider them"). Petitioner Norman is now barred from arguing these points since they were not presented to the Eleventh Circuit, Respondents were never given an opportunity to argue their validity and the Eleventh Circuit never assessed their merits.

### ii. The District Court Did Consider All Relevant Evidence

Petitioner Norman contends the District Court erred in not reviewing his affidavit prior to granting

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[7] Petitioner Norman did cite 29 U.S.C. Section 158(c) in his appellate brief for the proposition that "blacklisting" is "proscribed" by that section. However, the argument advanced by Petitioner Norman before this Court was not made to the Eleventh Circuit.

Respondents' motions for summary judgment. Petitioner Norman bases this argument on a statement made by the District Judge during oral argument that he did not have Norman's affidavit before him. [Norman Petition 6]. However, the ruling on the motions was entered several months after oral argument and there is no basis to conclude the District Court did not consider Norman's affidavit prior to ruling. Further, as argued by Respondents before the Eleventh Circuit, Norman's affidavit should have been stricken from the record in any event since its submission was late by more than seven months.

### iii. Norman Worked For Eastern And Was Thus A "Scab"

Petitioner Norman contends that since he was merely in training, he was not "working" for Eastern and was thus not a "scab." [Norman Petition 8]. However, as correctly stated by the Eleventh Circuit, a "scab" is someone who works or offers to work during a work stoppage. The Eleventh Circuit concluded that Norman was hired by Eastern as a DC-9 Captain during the sympathy strike and received compensation during training. [Maj. Op. 31]. Thus, participating in the training was "work." Since Norman worked or offered to work for Eastern during the sympathy strike, he along with all other Petitioners, was a scab.

## III

## CONCLUSION

For the foregoing reasons, the Copeland Respondents respectfully request this Honorable Court deny the Petitions For A Writ Of Certiorari.

Respectfully submitted,

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